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Attorney for Defendant  
ARMADILLO HOLDINGS, LLC

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

PORSCHE BARRETT, an individual, on  
behalf of herself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

ARMADILLO HOLDINGS, LLC, a Nevada  
limited liability company,

Defendant.

Case No.:

**NOTICE OF REMOVAL OF CIVIL  
ACTION TO THE UNITED STATES  
DISTRICT COURT**

Stanislaus County Superior Court  
Case No. CV-22-001986

Complaint Filed: May 4, 2022

TO THE HONORABLE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Armadillo Holdings, LLC (“Armadillo”) removes this  
action to this Court from the Superior Court of the State of California, County of Stanislaus under the  
Class Action Fairness Act, 28 U.S.C. § 1332(d) (“CAFA”). Armadillo submits this Notice of Removal  
without waiving any defenses to the claims asserted by Plaintiff Porsche Barrett (“Barrett”) and without  
conceding that Barrett has pled claims upon which relief can be granted.

### **I. PROCEDURAL BACKGROUND**

1. On May 4, 2022, Barrett filed a putative class action Complaint (“Complaint”) in the  
Superior Court of the State of California, County of Stanislaus, entitled *Porsche Barrett v. Armadillo  
Holdings, LLC*, Cause No: CV-22-001986. Plaintiff alleges the following eight putative class-wide causes  
of action: (1) unfair competition; (2) failure to pay minimum wages; (3) failure to pay overtime wages;  
(4) failure to provide required meal periods; (5) failure to provide required rest periods; (6) failure to  
provide accurate wage statements; (7) failure to provide wages when due; and (8) failure to reimburse  
employees for required expenses. A true and correct copy of the Complaint is attached as **Exhibit A**.

2. Armadillo was served a copy of the Complaint and Summons via Notice and  
Acknowledgment by electronic mail on June 15, 2022. Service of the Complaint and Summons was  
deemed complete upon Armadillo’s counsel’s execution of a Notice of Acknowledgement and Receipt  
on or around July 5, 2022 under Code of Civil Procedure § 415.30.

3. The Complaint is Plaintiff’s operative pleading in this action as of the date of this filing.

### **II. THIS REMOVAL IS TIMELY FILED**

4. A defendant has 30 days to file a notice of removal, measured from the date the defendant  
is served with the initial pleading or within 30 days of receipt of an amended pleading or other papers  
from which it may first be ascertained that the case is removable. 28 U.S.C. § 1446(b); *Murphy Bros, Inc.  
v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-78 (1999) (clarifying that receipt “through service or  
otherwise” means formal service and not through service of a courtesy copy of the complaint). If no such  
papers are filed and the defendant learns that the case is removable upon its own investigation, the

defendant may remove at any time. *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1123-24 (9th Cir. 2013).

5. As noted above, Armadillo was served a copy of the Complaint and Summons via Notice and Acknowledgment by electronic mail on June 15, 2022. Service of the Complaint and Summons was deemed complete upon Armadillo's counsel's execution of the Notice of Acknowledgement and Receipt on or around July 5, 2022 under Code of Civil Procedure § 415.30. Therefore this Notice of Removal is timely.

### **III. VENUE IS PROPER IN THIS COURT**

6. The Superior Court for the County of Stanislaus is within the Eastern District of California. Under 28 U.S.C. § 1441(a), venue is proper in this Court because it is the district and division embracing the place where the action is pending.

7. In compliance with 28 U.S.C. § 1446(a), this Notice of Removal is accompanied by the Declaration of Donald Estepp, attached as **Exhibit B**, and **Exhibits C to K**, which constitute copies of all process, pleadings and orders served on Armadillo or filed in this action in the Superior Court of California, County of Stanislaus.

### **IV. STATEMENT OF JURISDICTION**

8. CAFA grants district courts original jurisdiction over actions that: (1) have a putative class containing at least 100 members; (2) have an amount in controversy exceeding, in the aggregate, \$5,000,000.00, exclusive of interest and costs; and (3) have diversity of citizenship between at least one putative class member and any defendant. 28 U.S.C. § 1332(d)(2). Armadillo denies Barrett's factual allegations and denies that Barrett and the purported class are entitled to any relief. However, based on the allegations in the Complaint and information obtained from Armadillo's own investigation, all requirements for jurisdiction under CAFA have been met. Accordingly, removal is proper.

#### **A. The Putative Class Contains More than 100 Members**

9. To remove under CAFA, the aggregate number of putative class members in all proposed classes must be greater than 100. 28 U.S.C. § 1332(d)(2), 1332(d)(5)(B).

10. Barrett seeks to represent as "all persons who are or previously were employed by Defendant Armadillo Holdings . . . in California and classified as non-exempt employees at any time

1 during the period beginning four (4) years prior to the filing of [her] Complaint and ending on the date as  
2 determined by the Court.” (Ex. A, Compl. ¶ 11.)

3 11. Armadillo employed approximately 3,753 individuals as non-exempt employees from May  
4 4, 2018 to May 4, 2022 in California. (Ex. B, Declaration of Don Estepp, ¶ 5(a).) Accordingly, the number  
5 of putative class members proposed by Plaintiff far outnumbers the 100-member requirement.

6 **B. There is Minimal Diversity for Removal Under CAFA**

7 12. CAFA requires only minimal diversity for the purpose of establishing federal jurisdiction.  
8 If at least one purported class member is a citizen of a state different from any named defendant, minimal  
9 diversity is established. 28 U.S.C. § 1332(d)(2)(A); *United Steel, Paper & Forestry, Rubber, Mfg.,*  
10 *Energy, Allied Undus. & Werv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087,  
11 1090-91 (9th Cir. 2010) (explaining that to achieve its purpose, CAFA provides expanded original  
12 diversity jurisdiction for class actions meeting the minimal diversity requirement in 28 U.S.C. §  
13 1332(d)(2)). Minimal diversity exists here because Barrett and Armadillo are citizens of different states.

14 13. For diversity purposes, a person is a citizen of the state in which she is domiciled. *Kanter*  
15 *v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

16 14. Barrett has worked for Armadillo at its Modesto, California location since 2015. (Ex. B, ¶  
17 7.) She has maintained a California residence on file with Armadillo since that time. (*Id.*)

18 15. Barrett’s long-term employment with Armadillo and California residence is sufficient to  
19 establish California citizenship. *See Saldana v. Home Depot USA, Inc.*, 2016 WL 3391808, at \*2 (E.D.  
20 Cal. June 20, 2016) (residential address provided by employee to employer is prima facie evidence of  
21 state citizenship); *Bey v. SolarWorld Industries Am., Inc.*, 904 F. Supp. 2d 1103, 1105 (D. Or. 2012)  
22 (same).

23 16. Barrett also seeks to represent a class comprised of all non-exempt individuals employed  
24 by Armadillo in California over the last four years (Ex. A, ¶ 11), which logically includes other California  
25 citizens as well.

26 17. Armadillo, on the other hand, is not now and has never been a citizen of California. Under  
27 CAFA, an unincorporated association is a citizen of the state under whose laws it is organized and where  
28 it has its principal place of business. 28 U.S.C. § 1332(d)(10). The appropriate test to determine a

business’ principal place of business is the “nerve center” test. *Hertz Corp. v. Friend*, 559 U.S. 77, 79 (2010). Under this test, the principal place of business is the state where the business’ “officers direct, control, and coordinate” business activities and where it maintains its headquarters. *Id.*

18. Armadillo is organized under the laws of the State of Nevada. (Ex. B, ¶ 4.) However, Armadillo’s executive officers and high-level administrative employees are located and perform their duties in Indiana. (*Id.*) Armadillo’s principal place of business is therefore in Indiana.

19. Accordingly, diversity of citizenship exists under CAFA because Barrett and other putative class members are citizens of California and because Armadillo is only a citizen of Nevada and Indiana.

**C. The Amount in Controversy Exceeds \$5,000,000.00.**

20. Armadillo denies all liability as to Barrett’s claims and the ability for this action to proceed on a class-wide basis. However, the amount in controversy as pled in the Complaint exceeds \$5 million, exclusive of costs and interest. All calculations supporting the amount in controversy are based on the Complaint’s allegations and this Notice’s exhibits, assuming—without any admission by Armadillo—that Barrett’s allegations are true and that liability against Armadillo is established. *Ibarra v. Mannheim Invs., Inc.*, 775 F.3d 1193, 1198 n. 1 (9th Cir. 2015) (“Even when defendants have persuaded a court upon a CAFA removal that the amount in controversy exceeds \$5 million, they are still free to challenge the actual amount of damages in subsequent proceedings and at trial . . . because they are not stipulating to damages suffered”).

21. To calculate the amount in controversy under CAFA, the claims of the class members are aggregated to determine whether the amount in controversy exceeds the sum of \$5 million. 28 U.S.C. § 1332(d)(6). In determining whether the amount in controversy is met, the court considers all requested relief, including “punitive damages, statutory penalties, and attorney’s fees.” *Lake v. Delta Air Lines, Inc.*, 2011 WL 3102486, at \*4 (C.D. Cal. July 22, 2011).

22. The Ninth Circuit has instructed that removal is proper if, based on the allegations of the complaint and the notice of removal, it is more likely than not that the amount in controversy exceeds \$5 million. *Rodriguez v. AT&T Mobility Servs., Inc.*, 728 F.3d 975, 981 (9th Cir. 2013). Further, “[i]f a federal court is uncertain about whether ‘all matters in controversy’ in a purported class action ‘do not in the aggregate exceed the sum or value of \$5,000,000,’ the court should err in favor of exercising

jurisdiction over the case.” Senate Judiciary Report, S. REP. 109-14, at 42 (Feb. 28, 2005) (citation omitted).

23. If a defendant contends that damages are unstated or understated in the complaint, the defendant seeking removal may show by a preponderance of the evidence that the aggregate amount-in-controversy exceeds \$5 million. “This rule is not altered even if plaintiffs affirmatively contend in their complaint that damages do not exceed \$5 million.” *Ibarra v. Manheim Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015); *Cummings v. G6 Hospitality LLC*, 2019 WL 1455800, at \*2 (S.D. Cal. April 2, 2019).

24. Barrett alleges that the amount in controversy is less than \$5 million. (Ex. A, ¶ 11.) Armadillo disagrees, and Barrett, prior to class certification, has no authority to bind unnamed class members. *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 593 (2013). As detailed below, Armadillo has plausibly alleged and established by a preponderance of the evidence that the amount in controversy exceeds CAFA’s \$5 million minimum requirement.

25. Barrett alleges that Armadillo committed eight distinct categories of unlawful conduct toward Barrett and all Class Members over a four-year period of time. Barrett’s claims for meal and rest break premiums, wage statement penalties, waiting time penalties, and attorneys’ fees alone exceed the \$5 million threshold.

### **1. Meal and Rest Period Violations**

26. Barrett contends that “as a matter of company policy, practice and procedure,” Armadillo “failed to provide legally compliant meal and rest periods.” (Ex. A, ¶ 17.) She alleges that meal and rest break violations occurred “from time to time.” (*Id.* at ¶¶ 24, 19-20, and 120.) However, she also claims that Armadillo “systematically failed to provide legally compliant meal and rest periods” (*Id.* at ¶ 116 (emphasis added)), based on a “uniform” and “strict policy and practice.” (*Id.* at ¶¶ 17-18, 75, 77, and 116.) Indeed, she alleges that she and the other putative class members were “often” not fully relieved of duty for their meal periods because of their rigorous work schedules.” (*Id.* at ¶ 116.) Accordingly, Barrett seeks damages on behalf of all class members for missed meal and rest breaks. (*Id.* at ¶¶ 188, 122.)

27. Based on similar “pattern and practice” allegations in other cases, courts have determined that it is reasonable to assume violation rates between 20% and 60% and have applied a 40% violation rate to allegations almost identical to Barrett’s allegations. *Sanchez v. Abbott Laboratories*, 2021 WL

2679057, at \*4 (E.D. Cal. June 30, 2021) (noting that “courts in the Ninth Circuit have frequently held a violation rate between 20% and 60% to be reasonable when the plaintiff claims a ‘pattern and practice’ of violations” and holding that a 60% meal and rest violation rate was reasonable); *Lopez v. Adidas America, Inc.*, 2021 WL 927265, at \*3-4 (C.D. Cal. March 11, 2021) (analyzing nearly identical language to that filed here and finding 40% meal and rest period violation rates reasonable); *Alvarez v. Office Depot, Inc.*, 2017 WL 5952181, at \*3 (C.D. Cal. Nov. 30, 2017) (holding that a 60% violation rate was reasonable based on similar allegations).

28. Other courts interpreting nearly identical language to that here have determined that it is reasonable to assume that each putative class member experienced at least one meal or rest break violation per week. *See Collins v. Hilton Management LLC*, Case No. 21-cv-02523-JD, 2021 WL 2981977, at \*2 (N.D. Cal. July 15, 2021); *Nunes v. Home Depot U.S.A., Inc.*, Case No. 2:19-cv-01207-JAM-DB, 2019 WL 4316903, at \*2 (E.D. Cal. Sept. 12, 2019).

29. Here, CAFA jurisdiction is established under either assumption.

30. The statute of limitations for meal and rest period claims is three years. However, because Barrett alleged unfair competition under California Business and Professions Code section 17200 by way of meal and rest break violations, among others, she seeks recovery for a four-year period. *See* (Ex. A, ¶¶ 75-79, 115.)

31. From May 4, 2018 to May 4, 2022, Armadillo employed 3,753 current and former non-exempt employees. (Ex. B, ¶ 5(a).) On average, these employees earned \$14.64/hour and worked 36.19 weeks during that four-year period. (*Id.* at ¶ 5(c).) During that time frame, these employees worked approximately 487,754 shifts above five hours and approximately 576,591 shifts above four hours entitling them to at least one meal and rest break, respectively. (*Id.*)

32. Assuming a 40% violation rate for all meal-and-rest-break-eligible shifts from May 4, 2018 to May 4, 2022, the putative class’ total meal and rest break damages would be approximately **\$6,232,804.32** [(487,754 meal-break eligible shifts X \$14.64 X 40%) + (576,591 rest-break eligible shifts X \$14.64 X 40%)]. *See Lopez*, 2021 WL 927265, at \*3-4. These damages alone satisfy the CAFA’s \$5 million minimum requirement.



33. Alternatively, assuming even more conservatively a 20% meal and rest period violation rate, the putative class meal and rest break damages would be approximately **\$3,116,402.16** [(487,754 meal-break eligible shifts X \$14.64 X 20%) + (576,591 rest-break eligible shifts X \$14.64 X 20%)].

## 2. Wage Statement Penalties

34. Barrett alleges Armadillo violated Labor Code section 226 by failing to provide “complete and accurate wage statements which failed to show, among other things, the accurate gross wages earned, net wages, the total hours worked and all applicable hourly rates in effect during the pay period . . . .” (Ex. A, ¶ 125.)

35. Labor Code section 226(e) provides an employee a minimum of \$50.00 for the initial pay period in which a violation occurs, and \$100.00 for each additional pay period during which a violation occurs, up to a maximum penalty of \$4,000.00 per employee. The statute of limitations for penalties under this statute is one year. Cal. Civ. Proc. Code §340(a).

36. District courts have explained that “inaccurate wage penalties are derivative of meal and rest period violations. Therefore, when meal and rest period violation rates are found reasonable, courts have held a 100% wage statement inaccuracy assumption may also be reasonable.” *Sanchez*, 2021 WL 2679051, at \*6; *see also Nunes*, 2019 WL 4316903, at \*2-3; *Gipson v. Champion Home Builders, Inc.*, 2020 WL 4048503, at \*8 (E.D. Cal. July 20, 2020) (finding a 100% violation rate reasonable). Further, Barret’s allegations that class members were not paid for all hours worked and that overtime was not paid at the correct regular rate of pay is an additional ground to assume a 100% violation rate. *Vasquez v. RSI Home Products, Inc.*, 2020 WL 6778772, at \*9 (C.D. Cal. 2020) (approving assumed 100% violation rate based on complaint’s allegations); *Ramirez v. Carefusion Resources, LLC*, 2019 WL 2897902, at \*4 (S.D. Cal. 2019) (same); *Vikram v. First Student Mgmt., LLC*, 2017 WL 4457575, at \*4 (N.D. Cal. October 6, 2017) (same).

37. Armadillo employed approximately 1,898 individuals from May 4, 2021 to May 4, 2022 and issued 21,597 wage statements during that timeframe. (Ex. B, ¶ 5(d).) As a result, a reasonable exposure estimate for Barrett’s inaccurate wage statement claim is **\$2,064,800.00** [(1,898 employees X \$50 for the initial violation) + ((21,597 total pay statements issued – 1,898 initial pay periods) X \$100 for subsequent violations), which is less than \$4,000 per employee].



### 3. Labor Code § 203 – Waiting Time Penalties

38. Barrett alleges that Armadillo failed to timely pay former putative class members all wages due upon separation from employment. (Ex. A, ¶¶ 128-35.) Labor Code § 203(a) states that the wages of an employee who quits or is terminated “shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

39. The statute of limitations for recovery of waiting time penalties under Labor Code § 203 is three years. *Pineda v. Bank Am., N.A.*, 50 Cal. 4th 1389, 1401 (2010).

40. From May 4, 2019, through April 4, 2022, accounting for the 30-day waiting period, approximately 1,485 putative class members separated from employment with Armadillo. (Ex. B, ¶ 5(b).) The average wage for these putative class members from May 4, 2019, through April 4, 2022 was \$14.48/hour. (*Id.*) During the proposed class period, May 4, 2018 to May 4, 2022, the average shift length for all putative class members was 6.05 hours. (*Id.*)

41. Based on the allegations in the Complaint and because waiting time penalties are derivative of meal-and-rest-break violations, it is reasonable to assume that each of the 1,485 employees who separated from Armadillo from May 4, 2019 to April 4, 2022, experienced at least one unpaid wage violation. Thus, a 100% violation rate is reasonable. *See, e.g., Mackall v. Healthsource Global Staffing, Inc.*, 2016 WL 4579099, at \*6 (N.D. Cal. Sept. 2, 2016) (“[A]llegations of willful failure to timely pay wages (based on alleged overtime and meal and rest break violations) were sufficient to support estimations of waiting time penalties at a 100% rate”); *Fong v. Regis Corp.*, 2014 WL 26996, at \*6 (N.D. Cal. Jan. 2, 2014) (holding allegation that employer “systematically failed to pay ‘all wages due and owing’ upon termination . . . reasonably supports the assumption that each former employee might be entitled to the statutory maximum damages”); *Long v. Destination Maternity Corp.*, 2016 WL 1604968, at \*9 (S.D. Cal. Apr. 21, 2016) (where plaintiff alleged “class members have still not been paid money owed to them at the end of their employment,” holding it is reasonable to assume “that each of the class members who have left [d]efendant’s employ would seek the maximum thirty-day waiting penalty”); *Varsam v. Lab. Corp. of Am.*, 2015 WL 4199287, at \*4 (S.D. Cal. Jul. 13, 2015) (“It is not unreasonable to assume that when class members ‘regularly,’ worked off-the-clock that should have been compensated

at an overtime rate, as a matter of policy and/or practice worked during meal periods, and worked through rest breaks, every class member terminated during that time would have experienced a violation at some time and would not have been paid certain wages.”).

42. Therefore, a reasonable estimate of the amount in controversy for section 203 penalties is **\$3,902,758.20** [\$14.48 hourly pay X 6.05 hour shifts X 30 days X 1,485 separated employees].

#### 4. Attorneys’ Fees

43. Barrett seeks an award of attorneys’ fees and costs of suit on all her claims. (Compl., Prayer for Relief.) Future attorneys’ fee awards are included in determining the amount in controversy under fee-shifting statutes. *Fritsch v. Swift Tramp. Co. of Ariz., LLC*, 899 F.3d 785, 795 (9th Cir. 2019).

44. In the class action context, courts have found that 25% of the aggregate amount in controversy is a reasonable benchmark for calculating attorneys’ fees. *Vasquez v. RSI Home Products, Inc.*, 2020 WL 6778772, at \*10 (C.D. Cal. Nov. 12, 2020); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003); *Austin v. Floodliner, Inc.*, 2019 WL 2077851, at \*6-7 (N.D. Cal. May 10, 2019) (granting plaintiff’s counsel’s request for a fee award totaling 25% of the total settlement amount).

45. Under similar circumstances, other courts have awarded fees totaling 35% of the settlement amount—well above the benchmark. *See Ferrell v. Buckingham Prop. Mgmt.*, 2020 WL 4364647, at \*3-4 (E.D. Cal. July 30, 2020); *Dawson v. Hitco Carbon Composites, Inc.*, 2019 WL 7842550, at \*9 (C.D. Cal. Nov. 25, 2019).

46. Indeed, Barrett’s counsel has sought and has been granted approximately 33% of the common fund in other similar employment-related class actions. Amended Final Approved Order and Judgment, *Dominguez, et al. v. Lifesaver of Northern California*, Cause No. 20-CV-002586 (Monterey Super. Ct., May 20, 2022), ¶ 9-1 (attached as **Exhibit L**); Declaration of Shani O. ZaKay in Support of Motion for Award of Attorneys’ Fees, Costs and Service Awards, *Bruemmer v. Tempur Retail Stores, LLC*, Cause No. CIV1803646 (Marin Super. Ct., Dec. 11, 2020) (seeking 1/3 of the common fund in attorneys’ fees under loadstar calculation) (attached as **Exhibit M**).

47. In other cases, Barrett’s counsel has been awarded only the 25% benchmark rate. Order Granting Plaintiff’s Motion for Final Approval of Class Action Settlement and Approval of Attorneys’

Fees and Costs; Final Judgment Thereon, *Chavez v. Adidas America, Inc.*, Cause No. 5:16-cv-06533-LHK (N.D. Cal., April 19, 2018), ¶ 15 (attached as **Exhibit N**).

48. Conservatively applying the 25% benchmark here, the amount in controversy for attorneys' fees is between **\$2,270,990.09** (assuming a 20% meal-and-break-violation rate) and **\$3,050,090.63** (assuming a 40% meal-and-break-violation rate).

### 5. Summary

49. Based on Barrett's allegations, the amount in controversy may reasonably be calculated to be **\$15,250,453.15**, but is at least **\$11,354,950.45**.

<i>Waiting Time Penalties</i>	\$	3,902,758.20	\$	3,902,758.20
<i>Meal and Rest Break Damages (40%)</i>	\$	6,232,804.32	\$	-
<i>Meal and Rest Break Damages (20%)</i>	\$	-	\$	3,116,402.16
<i>Wage Statement Penalties</i>	\$	2,064,800.00	\$	2,064,800.00
<i>Attorneys' Fees</i>	\$	3,050,090.63	\$	2,270,990.09
<b>Total</b>	<b>\$</b>	<b>15,250,453.15</b>	<b>\$</b>	<b>11,354,950.45</b>

50. Even excluding Barrett's claims for failure to pay minimum wages, failure to pay overtime wages, and failure to reimburse employees for expenses, the \$5 million minimum threshold for CAFA removal is easily satisfied.

### **V. NOTICE TO PLAINTIFF AND STATE COURT**

51. Armadillo will promptly serve this Notice of Removal on all parties and will promptly file a copy of this Notice of Removal with the Clerk of the Superior Court of the State of California, County of Stanislaus, as required by 28 U.S.C. § 1446(d).

### **VI. PRAYER FOR REMOVAL**

52. WHEREFORE, Armadillo prays that this civil action be removed from the Superior Court of the State of California, County of Stanislaus, to the United States District Court for the Eastern District of California.

1 DATED: July 15, 2022

Respectfully submitted,

2 SEYFARTH SHAW LLP

3  
4 By: 

Justin T. Curley  
Jeffrey A. Nordlander

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6 Attorneys for Defendant  
7 ARMADILLO HOLDINGS, LLC  
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# EXHIBIT A

**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

ARMADILLO HOLDINGS, LLC dba TEXAS ROADHOUSE, a Nevada Limited Liability Company; TEXAS ROADHOUSE MANAGEMENT CORP., a Kentucky Corporation; TEXAS ROADHOUSE, INC., a Delaware Corporation; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PORSCHE BARRETT, an individual, on behalf of herself and on behalf of all persons similarly situated,

Electronically Filed  
5/4/2022 10:08 AM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Sonia Krohn, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:

(El nombre y dirección de la corte es):

Stanislaus County Superior Court - City Towers Courthouse  
801 10th Street, 4th Floor  
Modesto, CA 95354

CASE NUMBER: CV-22-001986  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. (SBN:277924) Tel: ((619) 255-9047 Fax: (858) 404-9203  
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 5/4/2022 10:08 AM

(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) Sonia Krohn (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

**ZAKAY LAW GROUP, APLC**

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5/4/2022 10:08 AM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Sonia Krohn, Deputy

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\$1,000 COMPLEX FEE PAID

**JCL LAW FIRM, APC**

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Freeland, John D  
This case has been assigned to Judge \_\_\_\_\_  
Dept. 23  
Department \_\_\_\_\_, for all purposes including Trial.

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF STANISLAUS**

PORSCHE BARRETT, an individual, on behalf  
of herself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

ARMADILLO HOLDINGS, LLC dba TEXAS  
ROADHOUSE, a Nevada Limited Liability  
Company; TEXAS ROADHOUSE  
MANAGEMENT CORP., a Kentucky  
Corporation; TEXAS ROADHOUSE, INC., a  
Delaware Corporation; and DOES 1-50,  
Inclusive,

Defendants.

Case No: CV-22-001986

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN



DUE IN VIOLATION OF CAL. LAB.  
CODE §§ 201, 202 AND 203;  
8) FAILURE TO REIMBURSE EMPLOYEES  
FOR REQUIRED EXPENSES IN  
VIOLATION OF CALIFORNIA LABOR  
CODE §2802.

**DEMAND FOR A JURY TRIAL**

Plaintiff PORSCHE BARRETT (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees, alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

**THE PARTIES**

1. Defendant ARMADILLO HOLDINGS, LLC dba TEXAS ROADHOUSE (“Defendant Armadillo Holdings”) is a Nevada limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant TEXAS ROADHOUSE MANAGEMENT CORP. (“Defendant Texas Roadhouse Management”) is a Kentucky corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant TEXAS ROADHOUSE, INC. (“Defendant Texas Roadhouse”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

4. Defendant Armadillo Holdings, Defendant Texas Roadhouse Management and Defendant Texas Roadhouse were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANT owns, operates and/or manages a chain of Texas Roadhouse restaurants in the state of California, including in Stanislaus County where PLAINTIFF worked.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this

1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are  
2 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief  
3 alleges, that the DEFENDANT named in this Complaint, including DOES 1 through 50,  
4 inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible  
5 in some manner for one or more of the events and happenings that proximately caused the injuries  
6 and damages hereinafter alleged.

7 7. The agents, servants, and/or employees of the DEFENDANT and each of them  
8 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority  
9 as the agent, servant and/or employee of the Defendant, and personally participated in the conduct  
10 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.  
11 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and  
12 all DEFENDANT are jointly and severally liable to PLAINTIFF and the other members of the  
13 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
14 Defendant’s agents, servants and/or employees.

15 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of  
16 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or  
17 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision  
18 regulating hours and days of work in any order of the Industrial Welfare Commission and, as  
19 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,  
20 at all relevant times.

21 9. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of  
22 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,  
23 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any  
24 employee a wage less than the minimum fixed by California state law, and as such, are subject to  
25 civil penalties for each underpaid employee.

26 10. PLAINTIFF has been employed by DEFENDANT in California since 2015 and at  
27 all times was classified by DEFENDANT as a non-exempt employee, paid on an hourly basis,  
28 and entitled to the legally required meal and rest periods and payment of minimum and overtime  
wages due for all time worked.

1           11. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
2 defined as all persons who are or previously were employed by Defendant Armadillo Holdings  
3 and/or Defendant Texas Roadhouse Management and/or Defendant Texas Roadhouse in  
4 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time  
5 during the period beginning four (4) years prior to the filing of this Complaint and ending on the  
6 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the  
7 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars  
8 (\$5,000,000.00).

9           12. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA  
10 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
11 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to  
12 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged  
13 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained  
14 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA  
15 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction  
16 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the  
17 other members of the CALIFORNIA CLASS who have been economically injured by  
18 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable  
19 relief.

20           13. DEFENDANT's uniform policies and practices alleged herein were unlawful,  
21 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain  
22 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

23           14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an  
24 injunction enjoining such conduct by DEFENDANT in the future, relief for the named  
25 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically  
26 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and  
27 equitable relief.

28 ///

**JURISDICTION AND VENUE**

15. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

**THE CONDUCT**

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted

1 accordingly.

2 **A. Meal Period Violations**

3 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
4 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
5 meaning the time during which an employee is subject to the control of an employer, including  
6 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS  
7 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work  
8 without paying them for all the time they were under DEFENDANT's control. Specifically, as a  
9 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,  
10 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-  
11 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial  
12 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited  
13 minimum wage and overtime wages by regularly working without their time being accurately  
14 recorded and without compensation at the applicable minimum wage and overtime rates.  
15 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA  
16 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

17 19. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
18 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
19 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-  
20 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and  
21 other CALIFORNIA CLASS Members were required from time to time to perform work as  
22 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a  
23 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and  
24 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which  
25 these employees were required by DEFENDANT to work ten (10) hours of work from time to  
26 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS  
27 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.  
28 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS

1 Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other  
2 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional  
3 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

4 **B. Rest Period Violations**

5 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and other  
6 CALIFORNIA CLASS members were also required from time to time to work in excess of four  
7 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work  
8 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these  
9 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked  
10 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten  
11 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and  
12 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)  
13 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and  
14 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or  
15 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-  
16 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's  
17 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to  
18 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

19 **C. Unreimbursed Business Expenses**

20 21. DEFENDANT as a matter of corporate policy, practice, and procedure,  
21 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF  
22 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and  
23 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf  
24 of DEFENDANT. Under California Labor Code Section 2802, employers are required to  
25 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.  
26 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
27 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
28 of his or her duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them to be  
2 unlawful."

3 22. In the course of their employment, DEFENDANT required PLAINTIFF and other  
4 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance  
5 of their job duties as employees for DEFENDANT. But for the use of their own personal cell  
6 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential  
7 job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other  
8 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the  
9 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA  
10 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related  
11 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

12 **D. Wage Statement Violations**

13 23. California Labor Code Section 226 requires an employer to furnish its employees  
14 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,  
15 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net  
16 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name  
17 of the employee and only the last four digits of the employee's social security number or an  
18 employee identification number other than a social security number, (8) the name and address of  
19 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay  
20 period and the corresponding number of hours worked at each hourly rate by the employee.

21 24. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
22 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed  
23 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed  
24 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate  
25 wage statements which failed to show, among other things, the total hours worked and all  
26 applicable hourly rates in effect during the pay period and the corresponding amount of time  
27 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest  
28 periods.



25. In addition to the foregoing, DEFENDANT, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

26. As a result, DEFENDANT issued PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

**E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

27. During the CLASS PERIOD, from time-to-time DEFENDANT failed and continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all hours worked.

28. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not limited to, undergoing pre-shift Covid-19 health screenings from time to time off-the-clock. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

29. DEFENDANT directed and directly benefited from the uncompensated off-the-clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

30. DEFENDANT controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

31. DEFENDANT was able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed.

32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

33. DEFENDANT's policies and practices deprived PLAINTIFF and the other members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

34. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANT's business records.

**F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Sick Pay**

36. From time-to-time during the CLASS PERIOD, DEFENDANT failed and continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for their overtime and double time hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages due them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by DEFENDANT's business records.

37. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

1           38. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
2 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid  
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for  
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly  
5 basis with bonus compensation when the employees met the various performance goals set by  
6 DEFENDANTS.

7           39. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
8 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double  
9 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-  
10 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus  
11 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked  
12 rather than just all non-overtime hours worked. Management and supervisors described the  
13 incentive/bonus program to potential and new employees as part of the compensation package.  
14 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
15 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted  
16 in a systematic underpayment of overtime and double time compensation, meal and rest period  
17 premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members by  
18 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time  
19 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
20 workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
21 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by  
22 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of  
23 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is  
24 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

25           40. In violation of the applicable sections of the California Labor Code and the  
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
27 matter of company policy, practice and procedure, intentionally and knowingly failed to  
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate

1 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.  
2 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment  
3 of the correct overtime and double time compensation, meal and rest period premiums, and sick  
4 pay as required by California law which allowed DEFENDANT to illegally profit and gain an  
5 unfair advantage over competitors who complied with the law. To the extent equitable tolling  
6 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the  
7 CLASS PERIOD should be adjusted accordingly.

8 **G. Unlawful Deductions**

9 41. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF  
10 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do  
11 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,  
12 DEFENDANTS violated Labor Code § 221.

13 **H. Violations for Untimely Payment of Wages**

14 42. Pursuant to California Labor Code section 204, PLAINTIFF and the  
15 CALIFORNIA CLASS members were entitled to timely payment of wages during their  
16 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not  
17 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,  
18 meal period premium wages, and rest period premium wages within permissible time period.

19 **I. Unlawful Rounding Violations**

20 43. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place  
21 an immutable timekeeping system to accurately record and pay PLAINTIFF and other  
22 CALIFORNIA CLASS Members for the actual time these employees worked each day, including  
23 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and  
24 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being  
25 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in  
26 fact unlawfully, and unilaterally round the time recorded in DEFENDANT'S timekeeping system  
27 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these  
28 employees for all their time worked, including the applicable overtime compensation for overtime

1 worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time,  
2 forfeited compensation for their time worked by working without their time being accurately  
3 recorded and without compensation at the applicable overtime rates.

4 44. Further, the mutability of DEFENDANT’S timekeeping system and unlawful  
5 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time  
6 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding  
7 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work  
8 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-  
9 duty meal break. Additionally, DEFENDANT’S unlawful rounding policy and practice caused  
10 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT  
11 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

12 **J. Failure to Provide Personnel Files**

13 45. On March 11, 2022, PLAINTIFF caused a written request via certified mail to be  
14 believed to DEFENDANTS for PLAINTIFF’S personnel and employment records, including but  
15 not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)  
16 PLAINTIFF’S complete employment file.

17 46. DEFENDANTS failed to provide and/or make available to PLAINTIFF her  
18 personnel records, payroll records, employment contract, and entire employment file within thirty  
19 (30) days of her request stated above. In fact, as of the date of filing of this complaint,  
20 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.  
21 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide  
22 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former  
23 employees) have the right to inspect personnel records maintained by the employer “related to  
24 the employee’s performance or to any grievance concerning the employee.” Employers must  
25 allow inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to  
26 and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory  
27 penalty, and an award of attorneys’ fees and costs for bringing this action

28 47. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
 2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
 3 provide PLAINTIFF with a second off-duty meal period each workday in which she was required  
 4 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF  
 5 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.  
 6 DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was  
 7 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks  
 8 without additional compensation and in accordance with DEFENDANT strict corporate policy  
 9 and practice. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that failed to  
 10 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF  
 11 for required business expenses related to the use of her personal cell phone, on behalf of and in  
 12 furtherance of her employment with DEFENDANT. Further, failed to provide and/or make  
 13 available to PLAINTIFF her personnel records, payroll records, employment contracts, and entire  
 14 employment file within (30) days of all her request on March 11, 2022. To date, DEFENDANT  
 15 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed  
 16 to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy  
 17 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

#### 17 **K. CLASS ACTION ALLEGATIONS**

18 58. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
 19 defined as all persons who are or previously were employed by Defendant Armadillo Holdings  
 20 and/or Defendant Texas Roadhouse Management and/or Defendant Texas Roadhouse in  
 21 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time  
 22 during the period beginning four (4) years prior to the filing of this Complaint and ending on the  
 23 date as determined by the Court (the “CLASS PERIOD”).

24 59. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been  
 25 deprived of wages and penalties from unpaid wages earned and due, including but not limited to  
 26 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
 27 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate  
 28

1 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain  
2 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

3 60. The members of the class are so numerous that joinder of all class members is  
4 impractical.

5 61. Common questions of law and fact regarding DEFENDANT's conduct, including  
6 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to  
7 accurately calculate the regular rate of pay for overtime compensation, failure to accurately  
8 calculate the regular rate of compensation for missed meal and rest period premiums, failing to  
9 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure  
10 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least  
11 minimum wage and overtime, exist as to all members of the class and predominate over any  
12 questions affecting solely any individual members of the class. Among the questions of law and  
13 fact common to the class are:

- 14 a. Whether DEFENDANT maintained legally compliant meal period policies and  
15 practices;
  - 16 b. Whether DEFENDANT maintained legally compliant rest period policies and  
17 practices;
  - 18 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
19 Members accurate premium payments for missed meal and rest periods;
  - 20 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
21 Members accurate overtime wages;
  - 22 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
23 Members at least minimum wage for all hours worked;
  - 24 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA  
25 CLASS Members for required business expenses;
  - 26 g. Whether DEFENDANT issued legally compliant wage statements;
- 27  
28



1 h. Whether DEFENDANT committed an act of unfair competition by systematically  
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA  
3 CLASS for all time worked;

4 i. Whether DEFENDANT committed an act of unfair competition by systematically  
5 failing to record all meal and rest breaks missed by PLAINTIFF and other  
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit  
7 of this work, required employees to perform this work and permits or suffers to  
8 permit this work;

9 j. Whether DEFENDANT committed an act of unfair competition in violation of the  
10 UCL, by failing to provide the PLAINTIFF and the other members of the  
11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 62. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
13 a result of DEFENDANT's conduct and actions alleged herein.

14 63. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
15 the same interests as the other members of the class.

16 64. PLAINTIFF will fairly and adequately represent and protect the interests of the  
17 CALIFORNIA CLASS Members.

18 65. PLAINTIFF retained able class counsel with extensive experience in class action  
19 litigation.

20 66. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the  
21 interests of the other CALIFORNIA CLASS Members.

22 67. There is a strong community of interest among PLAINTIFF and the members of  
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are  
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
25 sustained.

26 68. The questions of law and fact common to the CALIFORNIA CLASS Members  
27 predominate over any questions affecting only individual members, including legal and factual  
28 issues relating to liability and damages.

69. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

### **FIRST CAUSE OF ACTION**

#### **Unlawful Business Practices**

**(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

70. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

71. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

1           72. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
 2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203  
 3 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition  
 4 as follows:

5           Any person who engages, has engaged, or proposes to engage in unfair competition  
 6 may be enjoined in any court of competent jurisdiction. The court may make such  
 7 orders or judgments, including the appointment of a receiver, as may be necessary  
 8 to prevent the use or employment by any person of any practice which constitutes  
 9 unfair competition, as defined in this chapter, or as may be necessary to restore to  
 any person in interest any money or property, real or personal, which may have  
 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §  
 17203).

10           73. By the conduct alleged herein, DEFENDANT has engaged and continues to  
 11 engage in a business practice which violates California law, including but not limited to, the  
 12 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
 13 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
 14 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
 15 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
 16 constitute unfair competition, including restitution of wages wrongfully withheld.

17           74. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair  
 18 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous  
 19 or substantially injurious to employees, and were without valid justification or utility for which  
 20 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California  
 21 Business & Professions Code, including restitution of wages wrongfully withheld.

22           75. By the conduct alleged herein, DEFENDANT’s practices were deceptive and  
 23 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally  
 24 mandated meal and rest periods and the required amount of compensation for missed meal and  
 25 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the  
 26 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.  
 27 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,  
 28 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

1           76. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
2 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
4 DEFENDANT.

5           77. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
6 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
7 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members  
8 as required by Cal. Lab. Code §§ 226.7 and 512.

9           78. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each  
10 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
11 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
12 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
13 hours of work.

14           79. PLAINTIFF further demands on behalf of herself and on behalf of each  
15 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
16 not timely provided as required by law.

17           80. By and through the unlawful and unfair business practices described herein,  
18 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
20 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
21 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
22 to unfairly compete against competitors who comply with the law.

23           81. All the acts described herein as violations of, among other things, the Industrial  
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor  
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and  
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business  
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
28

1 82. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
2 and do, seek such relief as may be necessary to restore to them the money and property which  
3 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
4 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
5 business practices, including earned but unpaid wages for all time worked.

6 83. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
7 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,  
8 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
9 engaging in any unlawful and unfair business practices in the future.

10 84. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
11 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
12 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
13 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
14 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
15 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
16 unlawful and unfair business practices.

17 **SECOND CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

19 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

20 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

21 85. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
23 Complaint.

24 86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
25 for DEFENDANT'S willful and intentional violations of the California Labor Code and the  
26 Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate  
27 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.  
28

1 87. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public  
2 policy, an employer must timely pay its employees for all hours worked.

3 88. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
4 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than  
5 the minimum so fixed is unlawful.

6 89. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
7 including minimum wage compensation and interest thereon, together with the costs of suit.

8 90. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
9 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
10 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and  
11 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
12 CALIFORNIA CLASS.

13 91. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,  
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
16 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

17 92. In committing these violations of the California Labor Code, DEFENDANT  
18 inaccurately calculated the amount of time worked and consequently underpaid the actual time  
19 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted  
20 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
21 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
22 laws and regulations.

23 93. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
25 minimum wage compensation for their time worked for DEFENDANT.

26 94. During the CLASS PERIOD, PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a  
28 failure to pay all earned wages.

1           95. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
2 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
3 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
5 to them, and which will be ascertained according to proof at trial.

6           96. DEFENDANT knew or should have known that PLAINTIFF and the other  
7 members of the CALIFORNIA CLASS are under-compensated for their time worked.  
8 DEFENDANT systematically elected, either through intentional malfeasance or gross  
9 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice  
10 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
11 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages  
12 for their time worked.

13           97. In performing the acts and practices herein alleged in violation of California labor  
14 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked  
15 and provide them with the requisite compensation, DEFENDANT acted and continues to act  
16 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the  
17 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the  
18 consequences to them, and with the despicable intent of depriving them of their property and legal  
19 rights, and otherwise causing them injury in order to increase company profits at the expense of  
20 these employees.

21           98. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
24 California Labor Code and/or other applicable statutes. To the extent minimum wage  
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
26 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or  
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS



Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

**THIRD CAUSE OF ACTION**

**Failure To Pay Overtime Compensation**

**(Cal. Lab. Code §§ 510, 1194 and 1198)**

**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

99. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

100. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

101. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

102. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

103. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

104. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

1           105. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
3 implementing a uniform policy and practice that failed to accurately record overtime worked by  
4 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
5 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
6 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
7 (12) hours in a workday, and/or forty (40) hours in any workweek.

8           106. In committing these violations of the California Labor Code, DEFENDANT  
9 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
10 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal  
11 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
12 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
13 regulations.

14           107. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full  
16 compensation for overtime worked.

17           108. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
18 from the overtime requirements of the law. None of these exemptions are applicable to the  
19 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the  
20 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining  
21 agreement that would preclude the causes of action contained herein this Complaint. Rather,  
22 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on  
23 DEFENDANT's violations of non- negotiable, non-waivable rights provided by the State of  
24 California.

25           109. During the CLASS PERIOD, PLAINTIFF and the other members of the  
26 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,  
27 constituting a failure to pay all earned wages.  
28

1           110. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of  
2 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even  
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,  
5 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as  
6 evidenced by DEFENDANT's business records and witnessed by employees.

7           111. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
8 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
9 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA  
10 CLASS have suffered and will continue to suffer an economic injury in amounts which are  
11 presently unknown to them, and which will be ascertained according to proof at trial.

12           112. DEFENDANT knew or should have known that PLAINTIFF and the other  
13 members of the CALIFORNIA CLASS were under compensated for all overtime worked.  
14 DEFENDANT systematically elected, either through intentional malfeasance or gross  
15 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
16 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

18           113. In performing the acts and practices herein alleged in violation of California labor  
19 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime  
20 worked and provide them with the requisite overtime compensation, DEFENDANT acted and  
21 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other  
22 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,  
23 or the consequences to them, and with the despicable intent of depriving them of their property  
24 and legal rights, and otherwise causing them injury in order to increase company profits at the  
25 expense of these employees.

26           114. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,  
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

#### **FOURTH CAUSE OF ACTION**

##### **Failure To Provide Required Meal Periods**

**(Cal. Lab. Code §§ 226.7 & 512)**

**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

115. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

116. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other

1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation  
2 and in accordance with DEFENDANT's strict corporate policy and practice.

3 117. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
4 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members  
5 who were not provided a meal period, in accordance with the applicable Wage Order, one  
6 additional hour of compensation at each employee's regular rate of pay for each workday that a  
7 meal period was not provided.

8 118. As a proximate result of the aforementioned violations, PLAINTIFF and  
9 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,  
10 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

13 **(Cal. Lab. Code §§ 226.7 & 512)**

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

15 119. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
17 Complaint.

18 120. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were  
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for some  
21 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)  
22 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
23 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
24 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour  
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
26 CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
27 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate  
28 PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the

1 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide  
2 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest  
3 periods is evidenced by DEFENDANT's business records.

4 121. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
5 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members  
6 who were not provided a rest period, in accordance with the applicable Wage Order, one  
7 additional hour of compensation at each employee's regular rate of pay for each workday that rest  
8 period was not provided.

9 122. As a proximate result of the aforementioned violations, PLAINTIFF and  
10 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,  
11 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

12 **SIXTH CAUSE OF ACTION**

13 **Failure To Provide Accurate Itemized Statements**

14 **(Cal. Lab. Code §§ 226)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

16 123. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
17 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

18 124. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
19 "accurate itemized" statement in writing showing:

- 20 a. Gross wages earned,
- 21 b. (2) total hours worked by the employee, except for any employee whose  
22 compensation is solely based on a salary and who is exempt from payment  
23 of overtime under subdivision (a) of Section 515 or any applicable order of  
24 the Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the employee  
26 is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the employee  
28 may be aggregated and shown as one item,

- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

125. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

126. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

127. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period



pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

**SEVENTH CAUSE OF ACTION**

**Failure To Pay Wages When Due**

**(Cal. Lab. Code §§ 203)**

**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

128. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

129. Cal. Lab. Code § 200 provides that:

As used in this article:

- (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

130. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

131. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

132. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

133. Cal. Lab. Code § 203 provides:

1 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
2 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who  
3 quits, the wages of the employee shall continue as a penalty from the due date thereof at  
the same rate until paid or until an action therefor is commenced; but the wages shall not  
continue for more than 30 days.

4 134. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
5 terminated, and DEFENDANT has not tendered payment of wages to these employees who were  
6 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as  
7 required by law.

8 ~~135.~~ Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the  
9 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand  
10 up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all  
11 employees who terminated employment during the CLASS PERIOD and demand an accounting  
12 and payment of all wages due, plus interest and statutory costs as allowed by law.

13 **EIGHTH CAUSE OF ACTION**

14 **Failure To Reimburse Employees For Required Expenses**

15 **(Cal. Lab. Code §§ 2802)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 136. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
19 Complaint.

20 137. Cal. Lab. Code § 2802 provides, in relevant part, that:

21 An employer shall indemnify his or her employee for all necessary expenditures or losses  
22 incurred by the employee in direct consequence of the discharge of his or her duties, or of  
his or her obedience to the directions of the employer, even though unlawful, unless the  
employee, at the time of obeying the directions, believed them to be unlawful

23 138. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.  
24 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
25 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
26 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the members of the  
27 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to  
28 using their personal cellular phone all on behalf of and for the benefit of DEFENDANT.

Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANT to use their personal cell phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

139. PLAINTIFF therefore demands reimbursement on behalf of the members of the CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

#### **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to

PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226
- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: May 4, 2022

**ZAKAY LAW GROUP, APLC**

By:   
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: May 4, 2022

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_

Shani O. Zakay  
Attorney for PLAINTIFF

# EXHIBIT B

SEYFARTH SHAW LLP  
Justin T. Curley (SBN 233287)  
jcurley@seyfarth.com  
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Jeffrey A. Nordlander (SBN 308929)  
jnordlander@seyfarth.com  
400 Capitol Mall, Suite 2350  
Sacramento, California 95814-4428  
Tel.: (916) 448-0159  
Fax: (916) 558-4839

Attorney for Defendant  
ARMADILLO HOLDINGS, LLC

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PORSCHE BARRETT, an individual, on  
behalf of herself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

ARMADILLO HOLDINGS, LLC, a Nevada  
limited liability company and DOES 1 through  
50, inclusive,

Defendants.

Case No.: 34-2016-00197818

**DECLARATION OF DON ESTEPP IN  
SUPPORT OF DEFENDANT  
ARMADILLO HOLDINGS, LLC'S  
NOTICE TO REMOVE TO FEDERAL  
COURT**

Stanislaus County Superior Court  
Case No. CV-22-001986

Complaint Filed: May 4, 2022



**DECLARATION OF DON ESTEPP**

I, Don Estepp, hereby declare as follows:

1. I am over 18 years old, of sound mind, and have personal knowledge of the facts stated in this Declaration.

2. I am the Chief Financial Officer of Armadillo Holdings, LLC (“Armadillo”). Armadillo operates the six California Texas Roadhouse franchises that are the subject of this litigation.

3. I have personal knowledge of the foregoing, or knowledge based upon corporate records which are in my custody and control, among others. If called and sworn as a witness, I could and would competently testify thereto.

4. Armadillo is a limited liability company organized under the laws of the State of Nevada. However, Armadillo’s executive officers and high-level administrative employees are located and perform their duties in Indiana.

5. I have reviewed Armadillo’s human resources records for all non-exempt, hourly-paid employees at its six California restaurant locations employed at any time from May 4, 2018 to May 4, 2022. Based upon that review, I have determined the following:

a. Armadillo employed approximately 3,753 individuals as non-exempt employees from May 4, 2018 to May 4, 2022 in California.

b. From May 4, 2019, through April 4, 2022, approximately 1,485 individuals separated from employment with Armadillo. The average wage for these former employees was \$14.48/hour. From May 4, 2018 to May 4, 2022, the average shift length for all employees was 6.05 hours.

c. From May 4, 2018 to May 4, 2022, Armadillo employed 3,753 current and

1 former non-exempt employees. On average, these employees earned \$14.64/hour and  
2 worked 36.19 weeks during that four-year period. During that time frame, these  
3 employees worked approximately 487,754 shifts above five hours and approximately  
4 576,591 shifts above four hours entitling them to at least one meal and rest break,  
5 respectively.  
6

7 d. Armadillo employed approximately 1,898 individuals from May 4, 2021  
8 to May 4, 2022 and issued 21,597 wage statements during that timeframe.

9 6. I have reviewed Plaintiff Porsche Barrett's personnel file.

10 7. Plaintiff is a non-exempt, hourly-paid employee of Armadillo. Plaintiff Barrett  
11 has worked for Armadillo at its Modesto, California location since 2015 and she has maintained  
12 a California residence on file with Armadillo since that time.  
13

14 I affirm under the penalty for perjury under the laws of the State of California and the  
15 United States of America that the foregoing statements are true and correct to the best of my  
16 knowledge. Executed on this 14th day of July, 2022, at Fishers, Indiana.  
17

18  
19  
20 /s/ Don Estepp

Don Estepp

21 (signature on file with attorney Blake Burgan)  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT C

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF STANISLAUS**

801 10<sup>th</sup> Street 4<sup>th</sup> Floor  
Modesto, CA 95354  
ADR clerk: (209) 530-3191  
[www.stanct.org](http://www.stanct.org)

## **Alternative Dispute Resolution Information Packet**

Recognizing that many civil disputes can be resolved without the time and expense of traditional civil litigation, the Superior Court of California, County of Stanislaus, strongly encourages parties in general civil cases to explore and pursue the use of Alternative Dispute Resolution.

### **What is Alternative Dispute Resolution?**

Alternative Dispute Resolution (ADR) is the general term applied to a wide variety of dispute resolution processes which are alternatives to lawsuits. Trained impartial persons, called “neutrals”, resolve disputes or help parties resolve disputes themselves. The types of ADR options available are:

- Arbitration
- Mediation
- Neutral Evaluation

All ADR processes offer a partial or complete alternative to traditional court litigation for resolving disputes. At the present time, Stanislaus County Superior Court offers Mediation and Arbitration.

### **What are the advantages of using ADR?**

- **ADR can save time (FASTER).** Even in complex cases, a dispute can often be resolved in a matter of months, even weeks through ADR, while a lawsuit can take years.
- **ADR can save money (CHEAPER).** By resolving cases earlier, ADR can save parties money that might otherwise be spent on litigation costs (court, attorney and expert witness fees).
- **ADR encourages participation.** Parties have the opportunity to work together, rather than against each other by expressing their own interest and concerns to resolve the dispute.
- **ADR provides control and flexibility.** Parties can choose the ADR method most appropriate for their situation that will best serve their needs.
- **ADR can provide greater satisfaction and improved outcomes.** Surveys indicate that people who have used ADR are more satisfied than people who went through traditional litigation. The ADR atmosphere encourages cooperation and communication rather than the adversarial atmosphere found in litigation.

### **ADR may not be suitable for every dispute and may not be to your advantage.**

- The neutral will charge a fee for their services if the dispute is not resolved within the allotted time.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in the ADR process.
- If a dispute is not resolved through ADR, the parties may still have to put time and money into a lawsuit.

### **What are my ADR Options?**

Stanislaus County Superior Court currently offers pre-screened panelists with experience and training in each of the following areas. It is the policy of the Superior Court of California that all parties are required to meet-and-confer with the opposing side before the Case Management Conference pursuant to rule 3.724 of the California Rules of Court.

❖ **ARBITRATION**

In arbitration, a neutral person called an “arbitrator” presides at the hearing. The arbitrator hears arguments, makes legal rulings, and evaluates the evidence determining the facts from each side. The arbitrator applies the law to the facts of each case and makes an award based upon the merits. Arbitration awards may be entered as judgments in accordance with the agreement of the parties or, where there is no agreement, in accordance with the California statutes. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. These hearings are not held in court.

1. Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator's final decision. Generally, there is no right to appeal an arbitrator's decision.
2. Non-Binding arbitration means that the parties are free to request a trial with the court if they do not accept the arbitrator's decision.

**Cases for which Arbitration may be appropriate:** Arbitration is best for cases where the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time and expense of a trial. It may also be appropriate for complex matters.

**Operation/Court Policy.** Pursuant to Code of Civil Procedures § 1141.11, all civil actions in which the amount in controversy will not exceed \$50,000 shall be submitted to arbitration. A case is ordered to arbitration after the Case Management Conference. The neutral is chosen from the Courts approved panel, located on our website at [www.stanct.org](http://www.stanct.org).

**Cost.** There is no cost to the parties for judicial arbitration. [Local Rule 3.07 (1)]

❖ **MEDIATION**

In mediation, a neutral person called a “mediator” facilitates communication among parties, helps parties clarify facts, identify legal issues, explore options and arrive at a mutually acceptable resolution. Mediation is a voluntary, informal and confidential process held out of court.

**Cases for which Mediation may be appropriate:** Mediation may be particularly useful when parties have a relationship they want to preserve. If family members, neighbors or business partners have a dispute, mediation may be the best process to use.

**Operation/Court Policy.** All parties to a dispute may voluntarily agree to submit their case to mediation, either through a court appointment or through a private arrangement. A list of neutral providers who are trained and experienced have been reviewed and approved by the Court. The list can be found at [www.stanct.org](http://www.stanct.org). Litigants are not limited to a mediator on the court list and may select any mediator agreed upon by all the parties in private mediation. A mediation provider need not be an attorney.

1. Private Mediation. Parties to a civil action can agree to mediate their dispute with a mediator of their choice without court assistance.
2. Court Mediation. Upon stipulation of the parties, the parties may either personally select their mediator from the court approved list of neutrals or request the court to make the selection from the said list. The court will confirm the selected mediator and notice parties by mail.

**Cost.** Generally the cost of *private mediation* ranges from \$100-\$300 per hour and is shared equally by the parties. The cost of *court mediation* is \$400 total (\$200 per side) for the first two hours. In the event that mediation extends beyond two hours and parties determine it would be beneficial to continue the mediation process, the parties will independently be responsible for compensating the mediator in an amount set by the mediator.

❖ **Additional Information**

Under the Dispute Resolution Program Act (DRPA) funding, the court partners with Stanislaus County Mediation Center to provide free mediation services to litigants in small claims matters and cases involving unlawful detainer. For more information on the specific ADR programs of the Stanislaus County Superior Court, please review the Local Rules available on the Court's website at [www.stanct.org](http://www.stanct.org).

STAN-100

ATTORNEY FOR PLAINTIFF ( <i>name, bar card, and address</i> ):  TELEPHONE NO.: FAX NO. ( <i>Optional</i> ): E-MAIL ADDRESS ( <i>Optional</i> ):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, STANISLAUS COUNTY</b> MAILING ADDRESS: <b>801 10TH STREET, 4TH FLOOR</b> CITY AND ZIP CODE: <b>MODESTO, CA 95354</b> BRANCH NAME: <b>MODESTO</b>	
CASE NAME:	
<b>STIPULATION AND ORDER TO ADR</b>	CASE NUMBER:

The parties and their attorneys stipulate that the claims in this action shall be submitted to the following alternative dispute resolution process:

- |   |  |
|---|--|
| <input type="checkbox"/> Voluntary Mediation  | <input type="checkbox"/> Private Arbitration                                 |
| <input type="checkbox"/> Private Mediation    | <input type="checkbox"/> Neutral Evaluation                                  |
| <input type="checkbox"/> Judicial Arbitration | <input type="checkbox"/> Voluntary Mediation in lieu of Judicial Arbitration |

**This box is to be filled out for or Voluntary Mediation and Neutral Evaluation only.**

In accordance with Stanislaus County Rule of Court 3.10(D)(4) and 3.11(C)(2) this form must be signed by the agreed upon mediator or neutral-evaluator. If both parties agree the court will select a mediator for the case.

- ☐ It is Stipulated that \_\_\_\_\_ (name of mediator/neutral evaluator) shall serve as the neutral for this case.

\_\_\_\_\_  
Signature of Neutral

\_\_\_\_\_  
Date

- ☐ It is Stipulated that the Court select a mediator for this case.

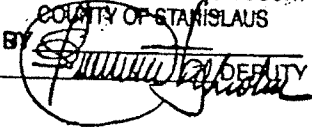
- For Voluntary Mediation this form must be completed and returned with \$400 (\$200 from the plaintiffs and \$200 from the defendants).

▶ _____ (PLAINTIFF)	▶ _____ (DEFENDANT)
_____ (SIGNATURE) (DATE)	_____ (SIGNATURE) (DATE)
▶ _____ (PLAINTIFF'S ATTORNEY)	▶ _____ (DEFENDANT'S ATTORNEY)
_____ (SIGNATURE) (DATE)	_____ (SIGNATURE) (DATE)

# EXHIBIT D



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Shani O. Zakay, Esq. (SBN:277924) Zakay Law Group, APLC 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 TELEPHONE NO.: (619) 255-9047 FAX NO.: (858) 404-9203 ATTORNEY FOR (Name): Plaintiff		<b>FILED</b> <b>MAY 04 2022</b> CLERK OF THE SUPERIOR COURT COUNTY OF STANISLAUS 
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Stanislaus STREET ADDRESS: 801 10th Street, 4th Floor MAILING ADDRESS: 801 10th Street, 4th Floor CITY AND ZIP CODE: Modesto, CA 95354 BRANCH NAME: City Towers Courthouse		
CASE NAME: Porsche Barrett v. Armadillo Holdings, LLC, et al.		CASE NUMBER: CV-22-001986
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☒ Large number of separately represented parties    d. ☒ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve    e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence    f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☐ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify): VIOLATION OF CA BUS. & PROF. CODE §§ 17200, et seq., et al.
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 4, 2022  
 Shani O. Zakay, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

# EXHIBIT E

**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

ARMADILLO HOLDINGS, LLC dba TEXAS ROADHOUSE, a Nevada Limited Liability Company; TEXAS ROADHOUSE MANAGEMENT CORP., a Kentucky Corporation; TEXAS ROADHOUSE, INC., a Delaware Corporation; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PORSCHE BARRETT, an individual, on behalf of herself and on behalf of all persons similarly situated,

Electronically Filed  
5/4/2022 10:08 AM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Sonia Krohn, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:

(El nombre y dirección de la corte es):

Stanislaus County Superior Court - City Towers Courthouse  
801 10th Street, 4th Floor  
Modesto, CA 95354

CASE NUMBER: CV-22-001986  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. (SBN:277924) Tel: ((619) 255-9047 Fax: (858) 404-9203  
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 5/4/2022 10:08 AM  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) Sonia Krohn (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

**ZAKAY LAW GROUP, APLC**

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Jackland K. Hom (State Bar #327243)  
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Attorneys for Plaintiff

Electronically Filed  
5/4/2022 10:08 AM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Sonia Krohn, Deputy

\$435 PAID

\$1,000 COMPLEX FEE PAID

This case has been assigned to Judge Freeland, John D  
Dept. 23  
Department \_\_\_\_\_, for all purposes including Trial.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF STANISLAUS**

PORSCHE BARRETT, an individual, on behalf  
of herself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

ARMADILLO HOLDINGS, LLC dba TEXAS  
ROADHOUSE, a Nevada Limited Liability  
Company; TEXAS ROADHOUSE  
MANAGEMENT CORP., a Kentucky  
Corporation; TEXAS ROADHOUSE, INC., a  
Delaware Corporation; and DOES 1-50,  
Inclusive,

Defendants.

Case No: CV-22-001986

**CLASS ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB.  
CODE §§ 201, 202 AND 203;  
8) FAILURE TO REIMBURSE EMPLOYEES  
FOR REQUIRED EXPENSES IN  
VIOLATION OF CALIFORNIA LABOR  
CODE §2802.

**DEMAND FOR A JURY TRIAL**

Plaintiff PORSCHE BARRETT (“PLAINTIFF”), an individual, on behalf of herself and all other similarly situated current and former employees, alleges on information and belief, except for her own acts and knowledge which are based on personal knowledge, the following:

**THE PARTIES**

1. Defendant ARMADILLO HOLDINGS, LLC dba TEXAS ROADHOUSE (“Defendant Armadillo Holdings”) is a Nevada limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant TEXAS ROADHOUSE MANAGEMENT CORP. (“Defendant Texas Roadhouse Management”) is a Kentucky corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant TEXAS ROADHOUSE, INC. (“Defendant Texas Roadhouse”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

4. Defendant Armadillo Holdings, Defendant Texas Roadhouse Management and Defendant Texas Roadhouse were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANT owns, operates and/or manages a chain of Texas Roadhouse restaurants in the state of California, including in Stanislaus County where PLAINTIFF worked.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this



1 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are  
2 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief  
3 alleges, that the DEFENDANT named in this Complaint, including DOES 1 through 50,  
4 inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible  
5 in some manner for one or more of the events and happenings that proximately caused the injuries  
6 and damages hereinafter alleged.

7 7. The agents, servants, and/or employees of the DEFENDANT and each of them  
8 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority  
9 as the agent, servant and/or employee of the Defendant, and personally participated in the conduct  
10 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.  
11 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and  
12 all DEFENDANT are jointly and severally liable to PLAINTIFF and the other members of the  
13 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
14 Defendant’s agents, servants and/or employees.

15 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of  
16 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or  
17 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision  
18 regulating hours and days of work in any order of the Industrial Welfare Commission and, as  
19 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,  
20 at all relevant times.

21 9. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of  
22 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,  
23 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any  
24 employee a wage less than the minimum fixed by California state law, and as such, are subject to  
25 civil penalties for each underpaid employee.

26 10. PLAINTIFF has been employed by DEFENDANT in California since 2015 and at  
27 all times was classified by DEFENDANT as a non-exempt employee, paid on an hourly basis,  
28 and entitled to the legally required meal and rest periods and payment of minimum and overtime  
wages due for all time worked.



1           11. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
2 defined as all persons who are or previously were employed by Defendant Armadillo Holdings  
3 and/or Defendant Texas Roadhouse Management and/or Defendant Texas Roadhouse in  
4 California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time  
5 during the period beginning four (4) years prior to the filing of this Complaint and ending on the  
6 date as determined by the Court (the "CLASS PERIOD"). The amount in controversy for the  
7 aggregate claim of the CALIFORNIA CLASS Members is under five million dollars  
8 (\$5,000,000.00).

9           12. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA  
10 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
11 the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to  
12 lawfully compensate these employees. DEFENDANT's uniform policy and practice alleged  
13 herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained  
14 and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA  
15 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction  
16 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the  
17 other members of the CALIFORNIA CLASS who have been economically injured by  
18 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable  
19 relief.

20           13. DEFENDANT's uniform policies and practices alleged herein were unlawful,  
21 unfair, and deceptive business practices whereby DEFENDANT retained and continues to retain  
22 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

23           14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an  
24 injunction enjoining such conduct by DEFENDANT in the future, relief for the named  
25 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically  
26 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and  
27 equitable relief.

28 ///

**JURISDICTION AND VENUE**

15. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs the CALIFORNIA CLASS across California, including in this County, and committed the wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

**THE CONDUCT**

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted

1 accordingly.

2 **A. Meal Period Violations**

3 18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
4 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,  
5 meaning the time during which an employee is subject to the control of an employer, including  
6 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS  
7 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work  
8 without paying them for all the time they were under DEFENDANT's control. Specifically, as a  
9 result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing,  
10 DEFENDANT required PLAINTIFF to work during what was supposed to be PLAINTIFF's off-  
11 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial  
12 lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited  
13 minimum wage and overtime wages by regularly working without their time being accurately  
14 recorded and without compensation at the applicable minimum wage and overtime rates.  
15 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA  
16 CLASS Members for all time worked is evidenced by DEFENDANT's business records.

17 19. From time-to-time during the CLASS PERIOD, as a result of their rigorous work  
18 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFF and other  
19 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-  
20 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and  
21 other CALIFORNIA CLASS Members were required from time to time to perform work as  
22 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a  
23 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and  
24 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which  
25 these employees were required by DEFENDANT to work ten (10) hours of work from time to  
26 time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS  
27 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.  
28 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS

1 Members were, from time to time, required to remain on duty and on call. PLAINTIFF and other  
2 CALIFORNIA CLASS Members therefore forfeited meal breaks without additional  
3 compensation and in accordance with DEFENDANT's strict corporate policy and practice.

4 **B. Rest Period Violations**

5 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and other  
6 CALIFORNIA CLASS members were also required from time to time to work in excess of four  
7 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work  
8 requirements and DEFENDANT's inadequate staffing. Further, for the same reasons these  
9 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked  
10 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten  
11 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and  
12 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)  
13 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and  
14 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or  
15 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-  
16 hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's  
17 inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to  
18 time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

19 **C. Unreimbursed Business Expenses**

20 21. DEFENDANT as a matter of corporate policy, practice, and procedure,  
21 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF  
22 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and  
23 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf  
24 of DEFENDANT. Under California Labor Code Section 2802, employers are required to  
25 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.  
26 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
27 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
28 of his or her duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them to be  
2 unlawful."

3 22. In the course of their employment, DEFENDANT required PLAINTIFF and other  
4 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance  
5 of their job duties as employees for DEFENDANT. But for the use of their own personal cell  
6 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential  
7 job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other  
8 CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in the  
9 course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA  
10 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related  
11 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

12 **D. Wage Statement Violations**

13 23. California Labor Code Section 226 requires an employer to furnish its employees  
14 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,  
15 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net  
16 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name  
17 of the employee and only the last four digits of the employee's social security number or an  
18 employee identification number other than a social security number, (8) the name and address of  
19 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay  
20 period and the corresponding number of hours worked at each hourly rate by the employee.

21 24. From time to time during the CLASS PERIOD, when PLAINTIFF and other  
22 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed  
23 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed  
24 to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate  
25 wage statements which failed to show, among other things, the total hours worked and all  
26 applicable hourly rates in effect during the pay period and the corresponding amount of time  
27 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest  
28 periods.

1           25. In addition to the foregoing, DEFENDANT, from time to time, failed to provide  
2 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with  
3 Cal. Lab. Code § 226.

4           26. As a result, DEFENDANT issued PLAINTIFF and the other members of the  
5 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,  
6 DEFENDANT's violations are knowing and intentional, were not isolated or due to an  
7 unintentional payroll error due to clerical or inadvertent mistake.

8       **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

9           27. During the CLASS PERIOD, from time-to-time DEFENDANT failed and  
10 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA  
11 CLASS for all hours worked.

12           28. During the CLASS PERIOD, from time-to-time DEFENDANT required  
13 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift  
14 work, including but not limited to, undergoing pre-shift Covid-19 health screenings from time to  
15 time off-the-clock. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS  
16 to have to work while off-the-clock.

17           29. DEFENDANT directed and directly benefited from the uncompensated off-the-  
18 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

19           30. DEFENDANT controlled the work schedules, duties, protocols, applications,  
20 assignments, and employment conditions of PLAINTIFF and the other members of the  
21 CALIFORNIA CLASS.

22           31. DEFENDANT was able to track the amount of time PLAINTIFF and the other  
23 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to  
24 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all  
25 wages earned and owed for all the work they performed.

26           32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-  
27 exempt employees, subject to the requirements of the California Labor Code.  
28

1 33. DEFENDANT's policies and practices deprived PLAINTIFF and the other  
2 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages  
3 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the  
4 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)  
5 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

6 34. DEFENDANT knew or should have known that PLAINTIFF and the other  
7 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

8 35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS  
9 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit  
10 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to  
11 not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked  
12 in accordance with applicable law is evidenced by DEFENDANT's business records.

13 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**  
14 **Sick Pay**

15 36. From time-to-time during the CLASS PERIOD, DEFENDANT failed and  
16 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS  
17 members for their overtime and double time hours worked, meal and rest period premiums, and  
18 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages  
19 due them for working overtime without compensation at the correct overtime and double time  
20 rates, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform policy and  
21 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and  
22 double time worked, meal and rest period premiums, and sick pay in accordance with applicable  
23 law is evidenced by DEFENDANT's business records.

24 37. State law provides that employees must be paid overtime at one-and-one-half times  
25 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were  
26 compensated at an hourly rate plus incentive pay that was tied to specific elements of an  
27 employee's performance.  
28



1           38. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
2 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid  
3 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for  
4 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly  
5 basis with bonus compensation when the employees met the various performance goals set by  
6 DEFENDANTS.

7           39. However, from-time-to-time, when calculating the regular rate of pay, in those pay  
8 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double  
9 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-  
10 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus  
11 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked  
12 rather than just all non-overtime hours worked. Management and supervisors described the  
13 incentive/bonus program to potential and new employees as part of the compensation package.  
14 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA  
15 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted  
16 in a systematic underpayment of overtime and double time compensation, meal and rest period  
17 premiums, and sick pay to PLAINTIFF and other CALIFORNIA CLASS members by  
18 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time  
19 for non-employees shall be calculated in the same manner as the regular rate of pay for the  
20 workweek in which the non-exempt employee uses paid sick time, whether or not the employee  
21 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by  
22 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of  
23 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is  
24 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

25           40. In violation of the applicable sections of the California Labor Code and the  
26 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a  
27 matter of company policy, practice and procedure, intentionally and knowingly failed to  
28 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate



1 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.  
2 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment  
3 of the correct overtime and double time compensation, meal and rest period premiums, and sick  
4 pay as required by California law which allowed DEFENDANT to illegally profit and gain an  
5 unfair advantage over competitors who complied with the law. To the extent equitable tolling  
6 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the  
7 CLASS PERIOD should be adjusted accordingly.

8 **G. Unlawful Deductions**

9 41. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF  
10 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do  
11 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,  
12 DEFENDANTS violated Labor Code § 221.

13 **H. Violations for Untimely Payment of Wages**

14 42. Pursuant to California Labor Code section 204, PLAINTIFF and the  
15 CALIFORNIA CLASS members were entitled to timely payment of wages during their  
16 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not  
17 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,  
18 meal period premium wages, and rest period premium wages within permissible time period.

19 **I. Unlawful Rounding Violations**

20 43. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place  
21 an immutable timekeeping system to accurately record and pay PLAINTIFF and other  
22 CALIFORNIA CLASS Members for the actual time these employees worked each day, including  
23 overtime hours. Specifically, DEFENDANT had in place an unlawful rounding policy and  
24 practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being  
25 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in  
26 fact unlawfully, and unilaterally round the time recorded in DEFENDANT'S timekeeping system  
27 for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying these  
28 employees for all their time worked, including the applicable overtime compensation for overtime

1 worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time to time,  
 2 forfeited compensation for their time worked by working without their time being accurately  
 3 recorded and without compensation at the applicable overtime rates.

4 44. Further, the mutability of DEFENDANT’S timekeeping system and unlawful  
 5 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members’ time  
 6 being inaccurately recorded. As a result, from time to time, DEFENDANT’S unlawful rounding  
 7 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work  
 8 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-  
 9 duty meal break. Additionally, DEFENDANT’S unlawful rounding policy and practice caused  
 10 PLAINTIFF and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT  
 11 for more than ten (10) hours during a shift without receiving a second off-duty meal break.

12 **J. Failure to Provide Personnel Files**

13 45. On March 11, 2022, PLAINTIFF caused a written request via certified mail to be  
 14 believed to DEFENDANTS for PLAINTIFF’S personnel and employment records, including but  
 15 not limited to: (1) payroll records; (2) employment contracts; (3) itemized pay stubs; and (4)  
 16 PLAINTIFF’S complete employment file.

17 46. DEFENDANTS failed to provide and/or make available to PLAINTIFF her  
 18 personnel records, payroll records, employment contract, and entire employment file within thirty  
 19 (30) days of her request stated above. In fact, as of the date of filing of this complaint,  
 20 DEFENDANTS have still failed to pay PLAINTIFF the statutory penalty in the amount of \$750.  
 21 DEFENDANTS violated Cal. Lab. Code Section 1198.5 by failing to respond and provide  
 22 PLAINTIFF with her employment file. Section 1198.5 states that employees (and former  
 23 employees) have the right to inspect personnel records maintained by the employer “related to  
 24 the employee’s performance or to any grievance concerning the employee.” Employers must  
 25 allow inspection or copying within thirty (30) days of the request. PLAINTIFF is now entitled to  
 26 and requests injunctive relief to obtain compliance with Cal. Lab. Code Section 1198.5, a statutory  
 27 penalty, and an award of attorneys’ fees and costs for bringing this action

28 47. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take  
 off duty meal and rest breaks and was not fully relieved of duty for her rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)  
 2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to  
 3 provide PLAINTIFF with a second off-duty meal period each workday in which she was required  
 4 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF  
 5 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.  
 6 DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during what was  
 7 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks  
 8 without additional compensation and in accordance with DEFENDANT strict corporate policy  
 9 and practice. Moreover, DEFENDANT also provided PLAINTIFF with a paystub that failed to  
 10 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF  
 11 for required business expenses related to the use of her personal cell phone, on behalf of and in  
 12 furtherance of her employment with DEFENDANT. Further, failed to provide and/or make  
 13 available to PLAINTIFF her personnel records, payroll records, employment contracts, and entire  
 14 employment file within (30) days of all her request on March 11, 2022. To date, DEFENDANT  
 15 have not fully paid PLAINTIFF the minimum, overtime and double time compensation still owed  
 16 to her or any penalty wages owed to her under Cal. Lab. Code § 203. The amount in controversy  
 17 for PLAINTIFF individually does not exceed the sum or value of \$75,000.

#### 17 **K. CLASS ACTION ALLEGATIONS**

18 58. PLAINTIFF brings this Class Action on behalf of herself and a California class,  
 19 defined as all persons who are or previously were employed by Defendant Armadillo Holdings  
 20 and/or Defendant Texas Roadhouse Management and/or Defendant Texas Roadhouse in  
 21 California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time  
 22 during the period beginning four (4) years prior to the filing of this Complaint and ending on the  
 23 date as determined by the Court (the “CLASS PERIOD”).

24 59. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been  
 25 deprived of wages and penalties from unpaid wages earned and due, including but not limited to  
 26 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,  
 27 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate  
 28

1 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain  
2 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

3 60. The members of the class are so numerous that joinder of all class members is  
4 impractical.

5 61. Common questions of law and fact regarding DEFENDANT's conduct, including  
6 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to  
7 accurately calculate the regular rate of pay for overtime compensation, failure to accurately  
8 calculate the regular rate of compensation for missed meal and rest period premiums, failing to  
9 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure  
10 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least  
11 minimum wage and overtime, exist as to all members of the class and predominate over any  
12 questions affecting solely any individual members of the class. Among the questions of law and  
13 fact common to the class are:

- 14 a. Whether DEFENDANT maintained legally compliant meal period policies and  
15 practices;
  - 16 b. Whether DEFENDANT maintained legally compliant rest period policies and  
17 practices;
  - 18 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
19 Members accurate premium payments for missed meal and rest periods;
  - 20 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
21 Members accurate overtime wages;
  - 22 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS  
23 Members at least minimum wage for all hours worked;
  - 24 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA  
25 CLASS Members for required business expenses;
  - 26 g. Whether DEFENDANT issued legally compliant wage statements;
- 27  
28

1 h. Whether DEFENDANT committed an act of unfair competition by systematically  
2 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA  
3 CLASS for all time worked;

4 i. Whether DEFENDANT committed an act of unfair competition by systematically  
5 failing to record all meal and rest breaks missed by PLAINTIFF and other  
6 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit  
7 of this work, required employees to perform this work and permits or suffers to  
8 permit this work;

9 j. Whether DEFENDANT committed an act of unfair competition in violation of the  
10 UCL, by failing to provide the PLAINTIFF and the other members of the  
11 CALIFORNIA CLASS with the legally required meal and rest periods.

12 62. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as  
13 a result of DEFENDANT's conduct and actions alleged herein.

14 63. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has  
15 the same interests as the other members of the class.

16 64. PLAINTIFF will fairly and adequately represent and protect the interests of the  
17 CALIFORNIA CLASS Members.

18 65. PLAINTIFF retained able class counsel with extensive experience in class action  
19 litigation.

20 66. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the  
21 interests of the other CALIFORNIA CLASS Members.

22 67. There is a strong community of interest among PLAINTIFF and the members of  
23 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are  
24 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries  
25 sustained.

26 68. The questions of law and fact common to the CALIFORNIA CLASS Members  
27 predominate over any questions affecting only individual members, including legal and factual  
28 issues relating to liability and damages.

69. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

### **FIRST CAUSE OF ACTION**

#### **Unlawful Business Practices**

**(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

70. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

71. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

1           72. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines  
 2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203  
 3 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition  
 4 as follows:

5           Any person who engages, has engaged, or proposes to engage in unfair competition  
 6 may be enjoined in any court of competent jurisdiction. The court may make such  
 7 orders or judgments, including the appointment of a receiver, as may be necessary  
 8 to prevent the use or employment by any person of any practice which constitutes  
 9 unfair competition, as defined in this chapter, or as may be necessary to restore to  
 10 any person in interest any money or property, real or personal, which may have  
 11 been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §  
 12 17203).

13           73. By the conduct alleged herein, DEFENDANT has engaged and continues to  
 14 engage in a business practice which violates California law, including but not limited to, the  
 15 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
 16 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
 17 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
 18 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
 19 constitute unfair competition, including restitution of wages wrongfully withheld.

20           74. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair  
 21 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous  
 22 or substantially injurious to employees, and were without valid justification or utility for which  
 23 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California  
 24 Business & Professions Code, including restitution of wages wrongfully withheld.

25           75. By the conduct alleged herein, DEFENDANT’s practices were deceptive and  
 26 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally  
 27 mandated meal and rest periods and the required amount of compensation for missed meal and  
 28 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the  
 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.  
 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,  
 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

1           76. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
2 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the  
3 other members of the CALIFORNIA CLASS to be underpaid during their employment with  
4 DEFENDANT.

5           77. By the conduct alleged herein, DEFENDANT's practices were also unfair and  
6 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide  
7 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members  
8 as required by Cal. Lab. Code §§ 226.7 and 512.

9           78. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each  
10 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal  
11 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for  
12 each workday in which a second off-duty meal period was not timely provided for each ten (10)  
13 hours of work.

14           79. PLAINTIFF further demands on behalf of herself and on behalf of each  
15 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was  
16 not timely provided as required by law.

17           80. By and through the unlawful and unfair business practices described herein,  
18 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the  
19 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and  
20 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the  
21 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT  
22 to unfairly compete against competitors who comply with the law.

23           81. All the acts described herein as violations of, among other things, the Industrial  
24 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor  
25 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and  
26 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business  
27 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
28



1 82. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
2 and do, seek such relief as may be necessary to restore to them the money and property which  
3 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the  
4 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair  
5 business practices, including earned but unpaid wages for all time worked.

6 83. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
7 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,  
8 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
9 engaging in any unlawful and unfair business practices in the future.

10 84. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
11 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of  
12 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a  
13 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other  
14 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal  
15 and economic harm unless DEFENDANT is restrained from continuing to engage in these  
16 unlawful and unfair business practices.

17 **SECOND CAUSE OF ACTION**

18 **Failure To Pay Minimum Wages**

19 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

20 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

21 85. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
23 Complaint.

24 86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim  
25 for DEFENDANT'S willful and intentional violations of the California Labor Code and the  
26 Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate  
27 and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.  
28

1 87. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public  
2 policy, an employer must timely pay its employees for all hours worked.

3 88. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the  
4 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than  
5 the minimum so fixed is unlawful.

6 89. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
7 including minimum wage compensation and interest thereon, together with the costs of suit.

8 90. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the  
9 other members of the CALIFORNIA CLASS without regard to the correct amount of time they  
10 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and  
11 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the  
12 CALIFORNIA CLASS.

13 91. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,  
14 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
15 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF  
16 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

17 92. In committing these violations of the California Labor Code, DEFENDANT  
18 inaccurately calculated the amount of time worked and consequently underpaid the actual time  
19 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted  
20 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
21 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
22 laws and regulations.

23 93. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct  
25 minimum wage compensation for their time worked for DEFENDANT.

26 94. During the CLASS PERIOD, PLAINTIFF and the other members of the  
27 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a  
28 failure to pay all earned wages.

1           95. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
2 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true  
3 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have  
4 suffered and will continue to suffer an economic injury in amounts which are presently unknown  
5 to them, and which will be ascertained according to proof at trial.

6           96. DEFENDANT knew or should have known that PLAINTIFF and the other  
7 members of the CALIFORNIA CLASS are under-compensated for their time worked.  
8 DEFENDANT systematically elected, either through intentional malfeasance or gross  
9 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice  
10 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
11 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages  
12 for their time worked.

13           97. In performing the acts and practices herein alleged in violation of California labor  
14 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked  
15 and provide them with the requisite compensation, DEFENDANT acted and continues to act  
16 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the  
17 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the  
18 consequences to them, and with the despicable intent of depriving them of their property and legal  
19 rights, and otherwise causing them injury in order to increase company profits at the expense of  
20 these employees.

21           98. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
22 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the  
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
24 California Labor Code and/or other applicable statutes. To the extent minimum wage  
25 compensation is determined to be owed to the CALIFORNIA CLASS Members who have  
26 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or  
27 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.  
28 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS

Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

### **THIRD CAUSE OF ACTION**

#### **Failure To Pay Overtime Compensation**

**(Cal. Lab. Code §§ 510, 1194 and 1198)**

**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

99. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

100. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

101. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

102. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

103. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

104. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members were required by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

1           105. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,  
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of  
3 implementing a uniform policy and practice that failed to accurately record overtime worked by  
4 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to  
5 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,  
6 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve  
7 (12) hours in a workday, and/or forty (40) hours in any workweek.

8           106. In committing these violations of the California Labor Code, DEFENDANT  
9 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
10 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal  
11 attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
12 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
13 regulations.

14           107. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
15 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full  
16 compensation for overtime worked.

17           108. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
18 from the overtime requirements of the law. None of these exemptions are applicable to the  
19 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the  
20 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining  
21 agreement that would preclude the causes of action contained herein this Complaint. Rather,  
22 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA CLASS based on  
23 DEFENDANT's violations of non- negotiable, non-waivable rights provided by the State of  
24 California.

25           109. During the CLASS PERIOD, PLAINTIFF and the other members of the  
26 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,  
27 constituting a failure to pay all earned wages.

28

1           110. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of  
2 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the  
3 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even  
4 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,  
5 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as  
6 evidenced by DEFENDANT's business records and witnessed by employees.

7           111. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
8 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all  
9 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA  
10 CLASS have suffered and will continue to suffer an economic injury in amounts which are  
11 presently unknown to them, and which will be ascertained according to proof at trial.

12           112. DEFENDANT knew or should have known that PLAINTIFF and the other  
13 members of the CALIFORNIA CLASS were under compensated for all overtime worked.  
14 DEFENDANT systematically elected, either through intentional malfeasance or gross  
15 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice  
16 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay  
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

18           113. In performing the acts and practices herein alleged in violation of California labor  
19 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime  
20 worked and provide them with the requisite overtime compensation, DEFENDANT acted and  
21 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other  
22 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,  
23 or the consequences to them, and with the despicable intent of depriving them of their property  
24 and legal rights, and otherwise causing them injury in order to increase company profits at the  
25 expense of these employees.

26           114. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore  
27 request recovery of all unpaid wages, including overtime wages, according to proof, interest,  
28 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a

sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

**FOURTH CAUSE OF ACTION**

**Failure To Provide Required Meal Periods**

**(Cal. Lab. Code §§ 226.7 & 512)**

**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

115. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

116. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other



1 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation  
2 and in accordance with DEFENDANT's strict corporate policy and practice.

3 117. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
4 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members  
5 who were not provided a meal period, in accordance with the applicable Wage Order, one  
6 additional hour of compensation at each employee's regular rate of pay for each workday that a  
7 meal period was not provided.

8 118. As a proximate result of the aforementioned violations, PLAINTIFF and  
9 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,  
10 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

13 **(Cal. Lab. Code §§ 226.7 & 512)**

14 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

15 119. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
17 Complaint.

18 120. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were  
19 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
20 Further, these employees were denied their first rest periods of at least ten (10) minutes for some  
21 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)  
22 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
23 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.  
24 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour  
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
26 CALIFORNIA CLASS Members were periodically denied their proper rest periods by  
27 DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate  
28 PLAINTIFF and CALIFORNIA CLASS Members for their rest periods as required by the



1 applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide  
2 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest  
3 periods is evidenced by DEFENDANT's business records.

4 121. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable  
5 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members  
6 who were not provided a rest period, in accordance with the applicable Wage Order, one  
7 additional hour of compensation at each employee's regular rate of pay for each workday that rest  
8 period was not provided.

9 122. As a proximate result of the aforementioned violations, PLAINTIFF and  
10 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,  
11 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

12 **SIXTH CAUSE OF ACTION**

13 **Failure To Provide Accurate Itemized Statements**

14 **(Cal. Lab. Code §§ 226)**

15 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

16 123. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
17 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

18 124. Cal. Labor Code § 226 provides that an employer must furnish employees with an  
19 "accurate itemized" statement in writing showing:

- 20 a. Gross wages earned,
- 21 b. (2) total hours worked by the employee, except for any employee whose
- 22 compensation is solely based on a salary and who is exempt from payment
- 23 of overtime under subdivision (a) of Section 515 or any applicable order of
- 24 the Industrial Welfare Commission,
- 25 c. the number of piece-rate units earned and any applicable piece rate if the employee
- 26 is paid on a piece-rate basis,
- 27 d. all deductions, provided that all deductions made on written orders of the employee
- 28 may be aggregated and shown as one item,

- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

125. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

126. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

127. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

**SEVENTH CAUSE OF ACTION**

**Failure To Pay Wages When Due**

**(Cal. Lab. Code §§ 203)**

**(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

128. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

129. Cal. Lab. Code § 200 provides that:

As used in this article:

- (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

130. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

131. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

132. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

133. Cal. Lab. Code § 203 provides:

1 If an employer willfully fails to pay, without abatement or reduction, in accordance with  
2 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who  
3 quits, the wages of the employee shall continue as a penalty from the due date thereof at  
the same rate until paid or until an action therefor is commenced; but the wages shall not  
continue for more than 30 days.

4 134. The employment of PLAINTIFF and many CALIFORNIA CLASS Members  
5 terminated, and DEFENDANT has not tendered payment of wages to these employees who were  
6 underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as  
7 required by law.

8 ~~135.~~ Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the  
9 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand  
10 up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all  
11 employees who terminated employment during the CLASS PERIOD and demand an accounting  
12 and payment of all wages due, plus interest and statutory costs as allowed by law.

13 **EIGHTH CAUSE OF ACTION**

14 **Failure To Reimburse Employees For Required Expenses**

15 **(Cal. Lab. Code §§ 2802)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 136. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
19 Complaint.

20 137. Cal. Lab. Code § 2802 provides, in relevant part, that:

21 An employer shall indemnify his or her employee for all necessary expenditures or losses  
22 incurred by the employee in direct consequence of the discharge of his or her duties, or of  
his or her obedience to the directions of the employer, even though unlawful, unless the  
employee, at the time of obeying the directions, believed them to be unlawful

23 138. From time-to-time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.  
24 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the  
25 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for  
26 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the members of the  
27 CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to  
28 using their personal cellular phone all on behalf of and for the benefit of DEFENDANT.

Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by DEFENDANT to use their personal cell phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of their expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer is required to do under the laws and regulations of California.

139. PLAINTIFF therefore demands reimbursement on behalf of the members of the CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

#### **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2 2. On behalf of the CALIFORNIA CLASS:

- 3 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth  
4 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant  
5 to Cal. Code of Civ. Proc. § 382;
- 6 b. Compensatory damages, according to proof at trial, including compensatory  
7 damages for overtime compensation and separately owed rest periods, due to  
8 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the  
9 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 10 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and  
11 the applicable IWC Wage Order;
- 12 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
13 which a violation occurs and one hundred dollars (\$100) per each member of the  
14 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding  
15 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for  
16 violation of Cal. Lab. Code § 226
- 17 e. The wages of all terminated employees from the CALIFORNIA CLASS as a  
18 penalty from the due date thereof at the same rate until paid or until an action  
19 therefore is commenced, in accordance with Cal. Lab. Code § 203.

20 3. On all claims:

- 21 a. An award of interest, including prejudgment interest at the legal rate;
- 22 b. Such other and further relief as the Court deems just and equitable; and
- 23 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

24 DATED: May 4, 2022

25 **ZAKAY LAW GROUP, APLC**

26  
27 By:   
28 Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: May 4, 2022

**ZAKAY LAW GROUP, APLC**

By: \_\_\_\_\_

Shani O. Zakay  
Attorney for PLAINTIFF

# EXHIBIT F



ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME, ADDRESS, PHONE, BAR NUMBER) ZAKAY LAW GROUP APLC  5440 MOREHOUSE DRIVE SUITE 3600  SAN DIEGO CA 92121  Attorney for: PLAINTIFF	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p>Electronically Filed  5/4/2022 10:08 AM  Superior Court of California  County of Stanislaus  Clerk of the Court  By: Sonia Krohn, Deputy</p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS</b> Street Address: City Towers Bldg., 801 10th St, 4 <sup>th</sup> Floor, Modesto, CA 95354 Civil Clerk's Office: 801 10 <sup>th</sup> Street, 4 <sup>th</sup> Floor, Modesto, CA 95354	
<b>Plaintiff/Petitioner:</b> PORSCHE BARRETT <b>Defendant/Respondent:</b> ARMADILLO HOLDINGS LLC; ET AL	
<b>NOTICE OF CASE MANAGEMENT CONFERENCE</b>	CASE NUMBER CV-22-001986

1. NOTICE is given that a **Case Management Conference** has been scheduled as follows:  
Hearing: 9/26/2022 9:00 AM

Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM/PM

This case is assigned to Judge Freeland, John D, Dept. 23, for all purposes, including trial.

\*Departments 21 & 22 are located at 801 10<sup>th</sup> Street, 6<sup>th</sup> Floor, Modesto, CA 95354

\*Departments 23 & 24 are located at 801 10<sup>th</sup> Street, 4<sup>th</sup> Floor, Modesto, CA 95354

**All filings shall be filed in the Clerk's Office at the City Towers, 4<sup>th</sup> Floor address.**

.....  
**You have 30 calendar days to file a written response with this court after the legal papers and the summons were served on you. You must also serve a copy of your written response on the plaintiff.**

2. You must file and serve a completed *Case Management Conference Statement* at least **fifteen (15) calendar days** before the case management conference.
3. You must be familiar with the case and be fully prepared to participate effectively in the case management conference.
4. At the case management conference the Court may make pretrial orders, including the following:
  - a. An order establishing a discovery schedule.
  - b. An order referring the case to arbitration.
  - c. An order dismissing fictitious defendants.
  - d. An order scheduling exchange of expert witness information.
  - e. An order setting subsequent conferences and the trial date.
  - f. Other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.).

Date: 5/4/2022 10:08 AM

by

Sonia Krohn Deputy Clerk

**--SANCTIONS--**

If you do not file the *Case Management Statement* required by local rule, or attend the case management conference or participate effectively in the conference, the court may impose sanctions (including dismissal of the case, striking of the answer, and payment of money).

CV003  
Mandatory  
Form

### **Rule 3.110. Time for Service of Complaint, Cross-Complaint, and Response**

- (a) [Application] This rule applies to the service of pleadings in civil cases except for collection cases under Rule 3.740 (a), Unlawful detainer actions, proceedings, under the Family Code, and other proceedings for which different service requirements are prescribed by law.
- (b) [Service of complaint] The complaint must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint. When the complaint is amended to add a defendant, the added defendant must be served and proof of service must be filed within 30 days after the filing of the amended complaint.
- (c) [Service of cross-complaint] A cross-complaint against a party who has appeared in the action must be accompanied by proof of service of the cross-complaint at the time it is filed. If the cross-complaint adds new parties, the cross-complaint must be served on all parties and proofs of service on the new parties must be filed within 30 days of the filing of the cross-complaint.
- (d) [Timing of responsive pleadings] The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint.
- (e) [Modification of timing: application for order extending time] The court, on its own motion or on the application of a party, may extend or otherwise modify the times provided in (b) - (d). An application for a court order extending the time to serve a pleading must be filed before the time for service has elapsed. The application must be accompanied by a declaration showing why service has not been completed, documenting the efforts that have been made to complete service, and specifying the date by which service is proposed to be completed.
- (f) [Failure to serve] If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an Order to Show Cause why sanctions shall not be imposed.
- (g) [Request for entry of default] If a responsive pleading is not served within the time limits specified in this rule and no extension of time has been granted, the plaintiff must file a request for entry of default within 10 days after the time for service has elapsed. The court may issue an Order to Show Cause why sanctions should not be imposed if the plaintiff fails to timely file the request for the entry of default.
- (h) [Default judgment] When a default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within 45 days after the default was entered, unless the court has granted an extension of time. The court may issue an Order to Show Cause why sanctions should not be imposed if that party fails to obtain entry of judgment against a defaulting party or to request an extension of time to apply for a default judgment within that time.
- (i) [Order to Show Cause] Responsive papers to an Order to Show Cause issued under this rule must be filed and served at least 5 calendar days before the hearing.

# EXHIBIT G

Electronically Filed  
6/9/2022 11:20 AM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Yukari Williams, Deputy

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Eduardo Garcia (State Bar #290572)  
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Attorneys for Plaintiff PORSCHE BARRETT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF STANISLAUS**

PORSCHE BARRETT, an individual, on behalf  
of herself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

ARMADILLO HOLDINGS, LLC dba TEXAS  
ROADHOUSE, a Nevada Limited Liability  
Company; TEXAS ROADHOUSE  
MANAGEMENT CORP., a Kentucky  
Corporation; TEXAS ROADHOUSE, INC., a  
Delaware Corporation; and DOES 1-50,  
Inclusive,

Defendants.

Case No. CV-22-001986

[Complaint Filed 05/04/2022]

**DECLARATION OF JEAN-CLAUDE  
LAPUYADE, ESQ., PURSUANT TO  
CALIFORNIA RULE OF COURT  
3.770(A), IN SUPPORT OF REQUEST  
TO DISMISS DEFENDANTS TEXAS  
ROADHOUSE MANAGEMENT  
CORP., AND TEXAS ROADHOUSE,  
INC.**

Judge: Hon. John D. Freeland  
Dept.: 23

1 I, Jean-Claude Lapuyade, declare and state as follows:

2 1. I am an attorney duly licensed to practice law in the State of California, and I am co-  
3 counsel with Shani O. Zakay of the Zakay Law Group, APLC as attorneys of record for Plaintiff  
4 PORSCHE BARRETT (hereinafter “Plaintiff”), in the above referenced action. I have personal  
5 knowledge of all of the facts stated herein, unless stated upon information and belief, and if called  
6 to testify as a witness, I could and would competently testify to them.

7 2. Plaintiff filed the Complaint for this class action on May 4, 2022.

8 3. After filing the action and conducting investigation and discovery into the claims,  
9 Plaintiff’s counsel learned that defendants **TEXAS ROADHOUSE MANAGEMENT CORP.**  
10 **(“TRM”), and TEXAS ROADHOUSE, INC. (“TRI”)** were improperly named.

11 4. Plaintiff reserves the right to name TRM and TRI as Defendants in this action at a  
12 later date if it is discovered to be necessary.

13 5. For this reason, as Plaintiff’s co-counsel, I respectfully request the Court to dismiss  
14 immediately TRM and TRI, without prejudice, in the action.

15 6. Defendant has not offered, and Plaintiff has not received any consideration  
16 whatsoever, direct or indirect, for the requested dismissal, *without* prejudice, of the TRM and TRI.

17 7. At this time, the class action has not been certified. Similarly, no notice of the class  
18 action has been provided to the class members.

19 8. A dismissal of TRM and TRI without notice to the putative class members is  
20 warranted here because the class allegations will be pursued against the proper Defendant.

21 9. This Declaration is made under penalty of perjury in the city of San Diego, State of  
22 California, June 9, 2022.

23  
24 JCL LAW FIRM, APC

25   
26 JEAN-CLAUDE LAPUYADE, ESQ.  
27 Attorneys for Plaintiffs.  
28

# EXHIBIT H

**ZAKAY LAW GROUP, APLC**  
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Jackland K. Hom (State Bar #327243)  
Julieann Alvarado (State Bar #334727)  
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[julieann@zakaylaw.com](mailto:julieann@zakaylaw.com)

Attorneys for Plaintiff PORSCHE BARRETT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF STANISLAUS**

PORSCHE BARRETT, an individual, on  
behalf of herself and on behalf of all  
persons similarly situated,

Plaintiff,

v.

ARMADILLO HOLDINGS, LLC dba  
TEXAS ROADHOUSE, a Nevada Limited  
Liability Company; TEXAS  
ROADHOUSE MANAGEMENT CORP.,  
a Kentucky Corporation; TEXAS  
ROADHOUSE, INC., a Delaware  
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. CV-22-001986

**PROOF OF SERVICE**

**DECLARATION OF SERVICE**

I, Natalia Michele, declare:

I am over the age of eighteen years and not a party to the case. I am employed in the County of San Diego, State of California, where the mailing occurred; and my business address is 5440 Morehouse Drive, Ste 3600, San Diego, CA 92121.

On the date specified below, I served the following documents as described below:

- **DECLARATION OF JEAN-CLAUDE LAPUYADE, ESQ., PURSUANT TO CALIFORNIA RULE OF COURT 3.770(A), IN SUPPORT OF REQUEST TOTO DISMISS TO DISMISS DEFENDANTS TEXAS ROADHOUSE MANAGEMENT CORP., AND TEXAS ROADHOUSE, INC.**

• **[PROPOSED] ORDER GRANTING DISMISSAL OF DEFENDANTS  
TEXAS ROADHOUSE MANAGEMENT CORP., AND TEXAS  
ROADHOUSE INC.**

☒ **BY MAIL** - I deposited such envelope in the mail at San Diego, California. The envelope was mailed with sufficient postage thereon. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with sufficient postage thereon at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing affidavit. Served to the following parties via U.S. Postal Service:

☐ **BY PERSONAL SERVICE** - I caused such envelope to be delivered by a process server employed by \_\_\_\_\_.

☐ **VIA FACSIMILE** - I faxed said document, to the office(s) of the addresses shown on the attached Service List and the transmission was reported as complete and without error.

☒ **BY ELECTRONIC TRANSMISSION** - I transmitted a PDF version of this document by way of email to the email addresses on the attached service list.

☐ **BY OVERNIGHT DELIVERY** - I deposited such envelope for collection and delivery by FedEx with delivery fees paid or provided for in accordance with ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing packages for overnight delivery by FedEx. They are deposited with a facility regularly maintained by FedEx for receipt on the same day in the ordinary course of business.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 9, 2022, at San Diego, California.

By: Natalia Michele

Natalia Michele



**SERVICE LIST**

*Barrett v. Armadillo Holdings, LLC dba Texas Roadhouse*  
 Superior Court Case No. CV-22-001986

Jean-Claude Lapuyade, Esq. Eduardo Garcia, Esq. Sydney Castillo-Johnson, Esq. JCL Law Firm, APC 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 T: 619-599-8292 F: 619-599-8291 <a href="mailto:jlapuyade@jcl-lawfirm.com">jlapuyade@jcl-lawfirm.com</a> <a href="mailto:egarcia@jcl-lawfirm.com">egarcia@jcl-lawfirm.com</a> <a href="mailto:scastillo@jcl-lawfirm.com">scastillo@jcl-lawfirm.com</a>  Handling Paralegal: Tesla Stone <a href="mailto:tstone@jcl-lawfirm.com">tstone@jcl-lawfirm.com</a>  <b>Co-Counsel for PLAINTIFF</b>	Shani O. Zakay, Esq. Jackland Hom, Esq. Julieann Alvarado, Esq. Zakay Law Group 5440 Morehouse Drive, Suite 3600 San Diego, CA 92121 T: 619-892-7095 F: 858-404-9203 <a href="mailto:shani@zakaylaw.com">shani@zakaylaw.com</a> <a href="mailto:jackland@zakaylaw.com">jackland@zakaylaw.com</a> <a href="mailto:julieann@zakaylaw.com">julieann@zakaylaw.com</a>  Handling Paralegal: Natalia Michele <a href="mailto:natalia@zakaylaw.com">natalia@zakaylaw.com</a>  <b>Co-Counsel for PLAINTIFF</b>
Blake J. Burgan, Esq. Kristine Gordon, Esq. Taft Stettinius & Hollister, LLP One Indiana Square, Suite 3500 Indianapolis, Indiana 46204 T: 317-713-3596 F: 317-713-3699 <a href="mailto:bburgan@taftlaw.com">bburgan@taftlaw.com</a> <a href="mailto:kgordon@taftlaw.com">kgordon@taftlaw.com</a>  <b>Counsel for Defendants ARMADILLO HOLDINGS</b>	

# EXHIBIT I

Electronically Filed  
6/14/2022  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Yukari Williams, Deputy

**JCL LAW FIRM, APC**

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Attorneys for Plaintiff PORSCHE BARRETT

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF STANISLAUS**

PORSCHE BARRETT, an individual, on behalf of  
herself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

ARMADILLO HOLDINGS, LLC dba TEXAS  
ROADHOUSE, a Nevada Limited Liability  
Company; TEXAS ROADHOUSE  
MANAGEMENT CORP., a Kentucky  
Corporation; TEXAS ROADHOUSE, INC., a  
Delaware Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. CV-22-001986

[Complaint Filed 05/04/2022]

~~PROPOSED~~ ORDER GRANTING  
DISMISSAL OF DEFENDANTS  
TEXAS ROADHOUSE  
MANAGEMENT CORP., AND TEXAS  
ROADHOUSE INC.

Judge: Hon. John D. Freeland  
Dept.: 23

**[PROPOSED] ORDER**

**IT IS SO ORDERED** that the good cause appearing and based on the supporting declaration, Defendants **TEXAS ROADHOUSE MANAGEMENT CORP.,** and **TEXAS ROADHOUSE, INC.,** named in the operative complaint, are hereby dismissed without prejudice effective on the date of this order.

**IT IS SO ORDERED:**

6/14/2022

DATED: \_\_\_\_\_, 2022

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
John Freeland

# EXHIBIT J

TO (insert name of party being served): ARMADILLO HOLDINGS, LLC dba TEXAS ROADHOUSE, a Nevada Limited Liability Company

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

# EXHIBIT K





# EXHIBIT L

**ZAKAY LAW GROUP, APLC**  
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ELECTRONICALLY FILED BY  
Superior Court of California,  
County of Monterey  
On 05/20/2022  
By Deputy: Boatwright, Breean

**BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**  
NORMAN B. BLUMENTHAL (STATE BAR #068687)  
KYLE R. NORDREHAUG (STATE BAR #205975)  
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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MONTEREY**

GUSTAVO DOMINGUEZ and MATTHEW )  
SCOTT, individuals, on behalf of themselves )  
and on behalf of all persons similarly situated, )  
Plaintiffs, )  
vs. )  
LIFESAFER OF NORTHERN )  
CALIFORNIA, a corporation; and DOES 1 )  
through 50, Inclusive, )  
Defendants. )

Case No. 20CV002586

**AMENDED ~~PROPOSED~~ FINAL  
APPROVAL ORDER AND JUDGMENT**

Hearing Date: May 20, 2022  
Hearing Time: 9:00am

Judge: Hon. Carrie M. Panetta  
Dept: 14

Date Filed: September 25, 2020  
Trial Date: Not Set

Plaintiff's motion for an order finally approving the Class Action Settlement Agreement ("Agreement") and motion for an award of attorneys' fees, costs and service awards duly came on for hearing on May 20, 2022, before the above-entitled Court. Zakay Law Group, APC and Blumenthal Nordrehaug Bhowmik De Blouw LLP appeared on behalf of Plaintiffs Gustavo Dominguez and Matthew Scott ("Plaintiffs"). Noland, Hamerly, Etienne & Hoss appeared on behalf of Defendant LifeSafer of Northern California ("Defendant").

I.

**FINDINGS**

Based on the oral and written argument and evidence presented in connection with the motion, the Court makes the following findings:

1. All terms used herein shall have the same meaning as defined in the Agreement.

2. This Court has jurisdiction over the subject matter of this litigation pending in the California Superior Court for the County of Monterey (“Court”), Case No. 20CV002586, entitled *Dominguez, et al., v. LifeSafer of Northern California et al.*, and over all Parties to this litigation, including the Class.

**Preliminary Approval of the Settlement**

3. On November 5, 2021, the Court granted preliminary approval of a class-wide settlement. At this same time the court approved certification of a provisional settlement class for settlement purposes only. The Court confirms this Order and finally approves the settlement and the certification of the Class.

**Notice to the Class**

4. In compliance with the Preliminary Approval Order, Class Notice was mailed by first class mail to the Class Members at their last known addresses on December 3, 2021. Mailing of the Class Notice to their last known addresses was the best notice practicable under the circumstances and was reasonably calculated to communicate actual notice of the litigation and the proposed settlement to the members of the Class. The Court finds that the Class Notice provided fully satisfies the requirements of California Rules of Court, rule 3.769.

5. The deadline for opting out or objecting was January 17, 2022. There was an adequate interval between notice and deadline to permit Class Members to choose what to do and act on their decision. No Class Members objected. No Class Members requested exclusion.

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**Fairness Of The Settlement**

6. The Agreement provides for a Gross Settlement Amount of \$175,000. The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

a. The settlement was reached through arms-length bargaining between the parties. There is no evidence of any collusion between the parties in reaching the proposed settlement.

b. The Parties' investigation and discovery have been sufficient to allow the Court and counsel to act intelligently.

c. Counsel for both parties are experienced in similar employment class action litigation and have previously settled similar class claims on behalf of employees claiming compensation. All counsel recommended approval of the Settlement.

d. The percentage of objectors and requests for exclusion is small. \_\_\_\_\_ objections were received. No requests for exclusion were received.

e. The participation rate is high. 100% of the Class Members will be participating in the Settlement and will be sent settlement payments.

7. The consideration to be given to the Class under the terms of the Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims asserted in this Action and is fair, reasonable and adequate compensation for the dismissal release of the Released Class Claims, given the uncertainties and risks of the litigation and the delays which would ensue from continued prosecution of the Action.

8. The Agreement is finally approved as fair, adequate and reasonable and in the best interests of the Class Members.

**Attorneys' Fees and Litigation Expenses**

9. The Agreement provides for an award of up to 1/3 of the Gross Settlement Amount to Class Counsel as the Class Counsel Fees Payment in this Action, subject to the Court's approval. The Agreement also provides for an award of their actual litigation expenses incurred in an amount not to exceed \$15,000 as the Class Counsel Litigation Expenses Payment. Class Counsel

1 requests an award of \$10,411.01 as reimbursement for litigation expenses, and \$58,333.33 for  
2 attorneys' fees.

3 10. An award of \$58,333.33 for the Class Counsel Fees Payment and \$10,411.01  
4 for the Class Counsel Litigation Expenses Payment is reasonable in light of the contingent nature of  
5 Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class Counsel.  
6 The requested attorneys' fee award represents 1/3 of the common fund, which is reasonable and at  
7 the low end of the range for fee awards in common fund cases, and is supported by Class Counsel's  
8 lodestar.

9 **Class Representative Service Payments**

10 11. The Agreement provides for a service award of up to \$7,500 for each Plaintiff  
11 as the Class Representative Service Payment, subject to the Court's approval. The Court finds that  
12 the amounts of ~~\$7,500~~ <sup>\$6500.00</sup> for Plaintiff Dominguez is reasonable in light of the risks and burdens  
13 undertaken by Plaintiff Dominguez in this class action litigation. The Court finds that the amounts  
14 of ~~\$7,500~~ <sup>\$6500.00</sup> for Plaintiff Scott is reasonable in light of the risks and burdens undertaken by Plaintiff  
15 Scott in this class action litigation.

16 **Settlement Administration Expenses**

17 12. The Agreement provides for Settlement Administration Expenses to be paid  
18 in an amount not to exceed \$8,000. The Declaration of the Settlement Administrator provides that  
19 the actual claims administration expenses were \$8,000. The amount of this payment is reasonable  
20 in light of the work performed by the Settlement Administrator.

21  
22 **II.**

23 **ORDERS**

24 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED,  
25 ADJUDGED AND DECREED:

26 1. The Class is certified for the purposes of settlement only. The Class is hereby  
27 defined to include:  
28

1 all non-exempt employees who are or previously were employed by Defendant in  
2 California during the period of September 25, 2016 to May 17, 2021. The Class  
3 Period means the period of time from September 25, 2016 to May 17, 2021.

4 2. No Class Members are excluded from the Class. Every person in the Class  
5 who did not opt out is a Participating Class Member.

6 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the  
7 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with  
8 this Order and the terms of the Agreement.

9 4. Class Counsel are awarded attorneys' fees in the amount of \$58,333.33 and  
10 litigation expenses in the amount of \$10,411.01. Class Counsel shall not seek or obtain any other  
11 compensation or reimbursement from Defendant, Plaintiffs or members of the Class.

12 5. The payments of service award to the Plaintiffs in the amounts of \$7,500 each  
13 are approved.

14 6. The payment of \$8,000 to the Settlement Administrator for Settlement  
15 Administration Expenses is approved.

16 7. The PAGA Payment of \$10,000 is approved.

17 8. Final Judgment is hereby entered in this action. The Final Judgment shall  
18 bind each Participating Class Member. The Final Judgment shall operate as a full release and  
19 discharge of Defendant and its officers, directors, employees, agents, successors and assigns  
20 ("Released Parties") from any and all Released Class Claims that occurred during the Class Period  
21 as to the Participating Class Members. The Released Class Claims are defined as all class claims  
22 alleged in the operative complaint which occurred during the Class Period, and expressly excluding  
23 all other claims, including claims for vested benefits, wrongful termination, unemployment  
24 insurance, disability, social security, workers' compensation, and class claims outside of the Class  
25 Period.

26 9. The Final Judgment shall also operate as a full release by all PAGA  
27 Employees and discharge of Defendant and its officers, directors, employees, agents, successors and  
28 assigns ("Released Parties") from any and all Released PAGA Claims that occurred during the

1 PAGA Period. The Released PAGA Claims are defined as claims asserted by the PAGA Employees  
2 for alleged violations of the California Labor Code and IWC Wage Order provisions alleged in the  
3 operative complaint and Plaintiffs' PAGA notice to the LWDA which occurred during the PAGA  
4 Period, and expressly excluding all other claims including claims for vested benefits, wrongful  
5 termination, unemployment insurance, disability, social security, workers' compensation, and  
6 PAGA claims outside of the PAGA Period.

7           10. In addition to the release given by each Participating Class Member, Plaintiffs  
8 also generally release the Released Parties from any and all of the Plaintiffs' Released Claims as  
9 defined in the Agreement. This general release by Plaintiffs also includes a waiver of rights under  
10 California Civil Code Section 1542.

11           11. The Agreement is not an admission by Defendant or any of the other Released  
12 Parties, nor is this Final Approval Order and Judgment a finding, of the validity of any claims in the  
13 Action or of any wrongdoing by Defendant or any of the other Released Parties. Neither this Final  
14 Approval Order, the Agreement, nor any document referred to herein, nor any action taken to carry  
15 out the Settlement is, may be construed as, or may be used as an admission by or against Defendant  
16 or any of the other Released Parties of any fault, wrongdoing or liability whatsoever. The entering  
17 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not  
18 in any event be construed as, or deemed to be evidence of, an admission or concession with regard  
19 to the denials or defenses by Defendant or any of the other Released Parties and shall not be offered  
20 in evidence in any action or proceeding against Defendants or any of the Released Parties in any  
21 court, administrative agency or other tribunal for any purpose as an admission whatsoever other  
22 than to enforce the provisions of this Final Approval Order and Judgment, the Agreement, or any  
23 related agreement or release. Notwithstanding these restrictions, any of the Parties may file in the  
24 Action or in any other proceeding this Final Approval Order and Judgment, the Agreement, or any  
25 other papers and records on file in the Action as evidence of the Settlement to support a defense of  
26 res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar  
27 defense as to the claims being released by the Settlement.

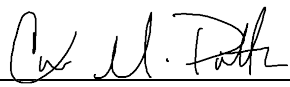
1                   12. Notice of entry of this Final Approval Order and Judgment shall be given to  
2 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send notice  
3 of entry of this Final Approval Order and Judgment to individual Class Members and the Final  
4 Approval Order and Judgment shall be posted on Class Counsel's website as indicated in the Class  
5 Notice.

6                   13. After entry of Final Judgment, the Court shall retain jurisdiction to construe,  
7 interpret, implement, and enforce the Agreement, to hear and resolve any contested challenge to a  
8 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in  
9 connection with the distribution of settlement benefits.

10                  11. If the Settlement does not become final and effective in accordance with the  
11 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to  
12 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,  
13 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

14  
15                   **IT IS SO ORDERED AND ADJUDGED. LET JUDGMENT BE FORTHWITH**  
16 **ENTERED ACCORDINGLY.**

17  
18 DATED: 5/20, 2022

19  
20   
21 Hon. Carrie M. Panetta  
22 Judge, Superior Court for the State of California,  
23 County of Monterey  
24  
25  
26  
27  
28



# EXHIBIT M

**ZAKAY LAW GROUP, APLC**  
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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MARIN**

EMI BRUEMMER, an individual, on behalf of  
herself and on behalf of all persons similarly  
situated,

Plaintiffs,

v.

TEMPUR RETAIL STORES, LLC, a Limited  
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No: CIV1803646

**DECLARATION OF SHANI O. ZAKAY  
IN SUPPORT OF MOTION FOR  
AWARD OF ATTORNEYS' FEES,  
COSTS AND SERVICE AWARDS**

Hearing Date: January 13, 2021  
Hearing Time: 1:30 p.m.

Honorable Judge James T. Chou  
Department B

Trial Date: Not Set  
Action Filed: October 11, 2018

I, SHANI O. ZAKAY, declare as follows:

1. I am the managing partner of the law firm of Zakay Law Group, APC, lead counsel of record for Plaintiff Emi Bruemmer ("Plaintiff") in this matter. As such, I am fully familiar with the facts, pleadings and history of the matter. I am submitting this declaration in support of Plaintiff's Motion for an award of attorneys' fees and litigation expenses in connection with services rendered in the above-entitled action and the requested service award. A true and correct

1 copy of the Class Action Settlement Agreement (“Agreement”) is attached hereto as Exhibit #1.  
2 The following facts are within my own personal knowledge, and if called as a witness, I could and  
3 would testify competently to the matters stated herein.

4 2. Over the course of the litigation during the last two years a number of attorneys  
5 have worked on this matter. Their credentials are reflected in the firm resumes which are attached  
6 hereto as Exhibit #2. Some of the major cases our firms have undertaken are also set forth in  
7 Exhibit #2. The bulk of the attorneys involved in this matter have had extensive class litigation  
8 experience, much of it in the area of employment class actions, unfair business practices and other  
9 complex litigation. I have experience in cases involving labor code violations and overtime  
10 claims. Class Counsel have litigated similar labor law cases against other employers on behalf of  
11 employees. Class Counsel have been approved as experienced class counsel throughout  
12 California. It is this level of experience which enabled the firms to undertake the instant matter  
13 and to successfully combat the resources of the defendant and their capable and experienced  
14 counsel. On account of the concerted and dedicated effort this case required in order to properly  
15 handle and prosecute, Class Counsel were precluded from taking other cases, and in fact, had to  
16 turn away other potential fee generating cases.

17 **The Attorneys’ Fees Requested Are Fair and Reasonable and Should Be Approved**

18 3. The Agreement For The Payment of Fees and Expenses Is Appropriate And Should  
19 Be Enforced.

- 20 a. Class Counsel successfully negotiated a class action settlement which provides  
21 for a common fund settlement to be paid by Defendant Tempur Retail Stores,  
22 LLC to the Class in the amount of One Hundred and Fifty Thousand Dollars  
23 (\$150,000) (the "Gross Settlement Amount"). (See Agreement at ¶ III(A)). As  
24 part of the settlement, the parties agreed to an award of attorneys’ fees equal to  
25 1/3 of the Gross Settlement Amount as their Class Counsel Fees Payment.  
26 (Agreement at ¶ III(B)(2)). By this motion, Class Counsel respectfully request  
27 approval of an award of the Class Counsel Fees Payment in an amount equal to  
28 1/3 of the Gross Settlement Amount.

1 b. In the class action context, that means “attempting to award the fee that  
2 informed private bargaining, if it were truly possible, might have reached.”  
3 Here, informed arms-length bargaining between experienced Class Counsel  
4 and Defendant resulted in Defendant bargaining Class Counsel’s fee award to  
5 1/3. Such bargaining is obviously the best measure of the market for fees.  
6 Moreover, fee awards in common fund settlements as this one have resulted in  
7 *higher* fees than the sum sought by Class Counsel herein, further reflecting the  
8 accurate market value of the award requested.

9 c. The requested fee award, agreed to by the parties as part of the Settlement,  
10 should be approved. The requested fee award was bargained for during arms’  
11 length adversarial bargaining by counsel for each of the parties as part of the  
12 Settlement.

13 4. Class Counsel’s Fee Award Is Properly Calculated as a Percentage of the Total  
14 Value Created for the Benefit of the Class.

15 a. As part of the settlement, the parties agreed to an award of attorneys’ fees equal  
16 to 1/3 of the Gross Settlement Amount, which equals \$50,000 for attorneys’  
17 fees. As part of the Agreement, Defendant also agreed that Class Counsel will  
18 be paid reasonable litigations expenses incurred as per Class Counsel's billing  
19 statement from the Gross Settlement Amount in an amount not to exceed  
20 \$15,000. Finally, Defendant also agreed that Plaintiff be awarded a service  
21 award in accordance with the Agreement.

22 b. In defining a reasonable fee, the Court should mimic the marketplace for cases  
23 involving a significant contingent risk such as this one. Our legal system  
24 places unique reliance on private litigants to enforce substantive provisions of  
25 employment law through class actions. Therefore, attorneys providing these  
26 substantial benefits should be paid an award equal to the amount negotiated in  
27 private bargaining that takes place in the legal market place.  
28

- 1 c. There is a substantial difference between the risk assumed by attorneys being  
2 paid by the hour and attorneys working on a contingent fee basis. The attorney  
3 being paid by the hour can go to the bank with his fee. The attorney working  
4 on a contingent basis can only log hours while working without pay towards a  
5 result that will hopefully entitle him to a market place contingent fee taking  
6 into account the risk and other factors of the undertaking. Otherwise, the  
7 contingent fee attorney receives nothing. In this case, Class Counsel subjected  
8 themselves to this contingent fee market risk in this all or nothing contingent  
9 fee case wherein the necessity and financial burden of private enforcement  
10 makes the requested award appropriate. The contingent fee practices of Class  
11 Counsel do not accommodate the investment of unnecessary time in a case.  
12 This case was litigated on a contingent basis with all of the concomitant risk  
13 factors inherent in such an uncertain undertaking. Indeed, I am aware of other  
14 similar cases where the court dismissed the class allegations or denied class  
15 certification. Under such circumstances, courts have held that a risk multiplier  
16 must be applied to the fee award.
- 17 d. Here, the contingent nature of the fee award, both from the point of view of  
18 eventual settlement and the point of view of establishing eligibility for an  
19 award, also warrant the requested fee award. A number of difficult issues, the  
20 adverse resolution of any one of which could have doomed the successful  
21 prosecution of the action, were present here. Attorneys' fees in this case were  
22 not only contingent but risky, with a very real chance that Class Counsel would  
23 receive nothing at all for their efforts, having devoted time and advanced costs.  
24 Class Counsel has previously invested in cases which resulted in no recovery.
- 25 e. At the time this case was brought, the result was far from certain. Defendant's  
26 practice at issue here had been in place for years. Defendant's numerous  
27 defenses to the merits of the case and to class certification created difficulties  
28 with proof and complex legal issues for Class Counsel to overcome. Here, a

1 number of defenses asserted by Defendants presented serious threats to the  
2 claims of the Plaintiffs and the other Class Members. Defendants asserted that  
3 the employment practices complied with all applicable Labor Laws. First,  
4 Defendant argued that the Supreme Court decision in *Brinker v. Superior*  
5 *Court*, 53 Cal. 4th 1004 (2012), weakened, if not eliminated, Plaintiff's claims,  
6 on liability, value, and class certifiability as to the meal and rest period claims.  
7 The vast majority of the damages alleged to have been suffered by the Class  
8 Members are attributed to missed meal and rest breaks. Before and during the  
9 mediation, Defendant aggressively argued that Defendant's policies and culture  
10 afforded the Class Members an opportunity to take timely meal and rest breaks,  
11 and that employees like the Plaintiff *chose* not to take compliant breaks.  
12 Defendant argued, therefore, that under the *Brinker* decision it has no liability  
13 for the missed breaks whatsoever. Defendant argued that it adopted and strictly  
14 enforced lawful policies. Because Plaintiff's claims were largely based on the  
15 missed breaks, and because Defendant's policies were, on their face, largely  
16 compliant, this presented a very real concern for Plaintiff and the Class  
17 Members. If successful, this defense could eliminate or substantially reduce  
18 any recovery to the Class. While Plaintiff believes that this defense, and  
19 others, could be overcome, Defendant maintain these defenses have merit and  
20 therefore present a serious risk to recovery for the Class. Plaintiff's second  
21 large claim argued that Defendant failed to pay its employees the correct  
22 overtime rate by failing to include commissions in the calculation of the regular  
23 rate. However, before and during the mediation, Defendant aggressively  
24 argued that that it did, in fact, pay Plaintiff and the Class Members the correct  
25 overtime rate by paying them a separate overtime adjustment, and that  
26 Plaintiff's only plausible claim was that the adjustment payment was made at a  
27 later time. While Plaintiff believes that this defense, and others, could be  
28 overcome, Defendant maintain these defenses have merit and therefore present

1 a serious risk to recovery for the Class. There was also a significant risk that, if  
2 the Action was not settled, Plaintiff would be unable to obtain class  
3 certification and thereby not recover on behalf of any employee other than  
4 themselves. Defendant argued that the individual experience of each employee  
5 varied with respect to the alleged claims. While other cases have approved  
6 class certification of wage and hour claims, class certification in this action  
7 would have been hotly disputed and was by no means a foregone conclusion.  
8 Finally, even if class certification was successful, as demonstrated by the  
9 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59  
10 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide  
11 recovery even where the class has been certified.

12 f. The Settlement was possible only because Class Counsel was able to persuade  
13 Defendant that there was an appreciable risk that Class Counsel would prevail  
14 on the factual and legal issues underlying liability, obtain class certification  
15 through trial, and overcome difficulties in proof as to monetary relief. In  
16 successfully navigating these hurdles so as to convince Defendant to settle,  
17 Class Counsel displayed skills consistent with those that might be expected of  
18 attorneys of comparable class action experience. Here, Class Counsel was  
19 pursuing a difficult and risky claim against Defendant where previous actions  
20 had failed to establish liability, failed to obtain class certification and/or failed  
21 to obtain monetary recovery for all employees.

22 g. To represent the Class on a contingent fee basis, Class Counsel had to forego  
23 compensable hourly work on other cases to devote the necessary time and  
24 resources to this contingent case. In so doing, Class Counsel gave up the  
25 hourly work that a firm can bank on for the risky contingent fee work in this  
26 case which could have paid Class Counsel nothing.

27 h. Class Counsel were required to advance all costs in this litigation. Especially  
28 in this type of litigation where the corporate defendant and their attorneys are

1 well funded, this can prove to be very expensive and risky. Accordingly,  
2 because the risk of advancing costs in this type of litigation can be significant,  
3 it is therefore cost prohibitive to many attorneys. The financial burdens  
4 undertaken by Class Representatives and Class Counsel in prosecuting this  
5 action on behalf of the Class were very substantial. To date, Class Counsel  
6 collectively advanced more than \$10,800.75 in costs which could not have  
7 been recovered if this case had been lost. The Plaintiff undertook the risk of  
8 liability for Defendant's costs had this case not succeeded, as well as other  
9 potential negative financial ramifications from having come forward to sue  
10 Defendants on behalf of the Class. Accordingly, the contingent nature of the  
11 fee and the financial burdens on Class Counsel and the Class Representatives  
12 also support the requested award.

13 i. In a common fund settlement "[t]he lodestar method is merely a cross-check on  
14 the reasonableness of a percentage figure". *Vizcaino v. Microsoft Corp.*, 290  
15 F.3d 1043, 1050, n.5 (9<sup>th</sup> Cir. 2002). **In this case, the reasonableness of the**  
16 **requested attorneys' fee of 1/3 of the common fund equaling \$50,000 is**  
17 **established by reference to Class Counsel's lodestar in this matter.** The  
18 contemporaneous billing records for all Class Counsel evidence that as of  
19 December 11, 2020, Class Counsel's current total lodestar is **\$82,616.25**, with  
20 additional fees still to be incurred. The requested fee award is therefore close  
21 to Class Counsel's overall lodestar, representing a multiplier of 0.6, which is  
22 less than multiplier approved in *Laffitte* and lower than multipliers awarded in  
23 other cases. As a result, this Court should appropriately conclude that an  
24 award which compares favorably to Class Counsel's overall lodestar is fair and  
25 reasonable and is justified under California law.

26 j. Counsel retained on a contingency fee basis, whether in private matters or in  
27 representative litigation of this sort, is entitled to a premium beyond his  
28 standard, hourly, non-contingent fee schedule in order to compensate for both



1 the risks and the delay in payment for the simple fact that despite the most  
2 vigorous and competent of efforts, success is never guaranteed. Indeed, if  
3 counsel is not adequately compensated for the risks inherent in difficult class  
4 actions, competent attorneys will be discouraged from prosecuting similar  
5 cases.

6 5. On January 28, 2015, in *4G Wireless Wage and Hour Cases* (Orange Country  
7 Superior Court, Case No. JCCP4736), the Honorable Gail A. Andler awarded a 33.33% fee  
8 request to Class Counsel in an overtime class action. On April 8, 2015 in *Mathies v. Union Bank*  
9 (San Francisco Superior Court Case No. CGC-10-498077), the Honorable Harold Kahn awarded a  
10 one-third (1/3) fee request to Class Counsel in an overtime class action. On April 7, 2016 in  
11 *Berry v. Urban Outfitters* (U.S.D.C. Central District of California Case No. 13-2628), the District  
12 Judge Jeffrey White awarded fees equal to 1/3 of the common fund in a wage and hour class  
13 settlement. On June 22, 2016, in *Dobrosky v. Arthur J. Gallagher*, (Central District Case No.  
14 5:13 cv 00646), District Judge Jesus Bernal awarded a fee equal to 1/3 of the common fund in a  
15 wage and hour class settlement. On June 14, 2017, in *Smith v. Space Exploration* (Los Angeles  
16 Superior Court Case No. BC554258), Judge Elihu Berle awarded Class Counsel a 1/3 fee award  
17 in a wage and hour class settlement. On November 13, 2017, in *Calhoun v. Celadon Trucking*  
18 (U.S.D.C. Central District of California Case No. 16-CV-1351), District Judge Philip S. Gutierrez  
19 awarded Class Counsel a one-third fee award in a wage and hour class settlement. On March 23,  
20 2018, in *Bailey v. Redfin*, (Los Angeles Superior Court, Case No. BC512191, the Court awarded a  
21 1/3 fee award in a wage and hour class settlement. On July 10, 2018, in *Zirpolo v. UAG Stevens*  
22 *Creek II* (Santa Clara Superior Court Case No. 17CV313457, Judge Brian Walsh awarded Class  
23 Counsel a one-third fee award in a wage and hour class settlement. On July 19, 2018, in *Metrow*  
24 *v. Liberty Mutual*, (U.S.D.C. Central District of California Case No. EDCV 16-01133-JGB), the  
25 District Court awarded Class Counsel a one-third fee award in a wage and hour class settlement.  
26 On December 4, 2018, in *Panda Express Wage and Hour Cases* (Los Angeles Superior Court,  
27 Case No. JCCP 4919) Judge Carolyn Kuhl awarded Class Counsel a one-third fee award in a  
28 wage and hour class settlement. On February 1, 2019, in *Solarcity Wage and Hour Cases* (San

1 Mateo Superior Court, Case No. JCCP 4945) Judge Marie Weiner awarded Counsel a one-third  
2 fee award in a wage and hour class settlement. On July 30, 2019, in *Erickson v. John Muir*  
3 *Health*, (Contra Costa Superior Court Case No. MSC18-00307) Judge Edward Weil awarded  
4 Counsel a one-third fee award in a wage and hour class settlement. On December 18, 2019, in  
5 *Velasco v. Lemonade Restaurant Group*, (Los Angeles Superior Court Case No. BC672235)  
6 Judge William Highberger awarded Counsel a one-third fee award in a wage and hour class  
7 settlement.

8 6. As of December 11, 2020, Zakay Law Group, APC incurred lodestar totaling  
9 \$63,300.00 in this matter. I have reviewed my firm's lodestar in this matter and believe the  
10 charges are reasonable and were reasonably necessary to the conduct of the case. From  
11 approximately October 1, 2018 through December 11, 2020, my firm has worked more than 126.7  
12 hours prosecuting these claims with the attorneys' hourly fee rates for attorneys at \$500, resulting  
13 in current lodestar equaling \$63,300.00. A detailed breakdown of the total fees and the services  
14 performed by the firm on this case is attached hereto as Exhibit #3. In addition, the law firm of  
15 Blumenthal Nordrehaug Bhowmik De Blouw, LLP, who was co-counsel on this case, incurred  
16 lodestar of \$19,316.25 for over 41.15 hours of work. (See Declaration of Nicholas De Blouw at  
17 ¶6.) Combining all of this lodestar results in a **total current lodestar for Class Counsel in the**  
18 **amount of \$82,616.25 for more than 167.85 hours of work.** In addition, Class Counsel will be  
19 performing additional work, including finalizing the motion for final approval, attending the  
20 hearing on final approval, finalizing the orders and judgment and monitoring completion of the  
21 settlement process. I expect this additional work will result in at least \$15,000 to \$25,000 in  
22 additional loadstar, bringing the multiplier even lower. The rates charged by my firm are in line  
23 with the prevailing rates of attorneys in the local legal community for similar work and, if this  
24 were a commercial matter, these are the charges that would be made and presented to the client.  
25 These hourly rates have been approved by Court's throughout California, including the Courts in  
26 the Superior Court of California. Finally, the reasonableness of Class Counsel's hourly rates is  
27 further confirmed by comparing such rates with the rates of comparable counsel practicing  
28 complex and class litigation as detailed in the National Law Journal Billing Survey. See e.g. *Zest*

1 *IP Holdings, LLC v. Implant Direct MFG., LLC*, 2014 U.S. Dist. LEXIS 167563 (S.D. Cal. 2014)  
2 (finding that “Mayer Brown's \$775 average billing rate for partners” and “Mayer Brown's \$543  
3 average associate billing rate” are reasonable rates when compared within 21 other firms  
4 practicing in the Southern District of California.) This survey is useful to show that Class  
5 Counsel’s rates are in line with the comparable rates of the defense counsel that opposes these  
6 types of class claims, such as Mayer Brown. In another example, Sheppard Mullin Richter &  
7 Hampton, who is opposing counsel in many cases prosecuted by Class Counsel charges rates as  
8 high as \$875 for partners and \$535 for associates. Similarly, Paul Hastings, another opposing  
9 counsel in these types of cases, charges between \$900 and \$750 for partners and \$755 and \$335  
10 for associates. Thus, the rates charged by Class Counsel for comparable work are less than these  
11 examples, and are therefore undoubtedly reasonable. **Therefore, the requested fee award as a**  
12 **percentage of the fund is supported by the overall lodestar incurred with reasonable**  
13 **multiplier of 0.6, which is less than the multiplier approved in *Laffitte* and lower than the**  
14 **multiplier approved in other cases.** The requested award is therefore reasonable viewed by the  
15 Lodestar/Multiplier cross-check.

16 **Costs**

17 7. As part of the Agreement at paragraph III(B)(2), the parties agreed that Class  
18 Counsel may seek an amount of up to \$15,000 for all expenses incurred as documented in Class  
19 Counsel's billing records as their Class Counsel Litigation Expenses Payment. Class Counsel  
20 request reimbursement for incurred litigation expenses and costs in the amount of \$10,800.75  
21 based upon Class Counsel’s billing records, which evidence that counsel incurred total litigation  
22 expenses in the total amount of \$10,800.75. These litigation expenses include the expenses  
23 incurred for filing fees, mediation fees, expert fees, delivery charges, travel expenses, legal  
24 research charges, postage, attorney service charges, and litigation support vendors, all of which  
25 are costs normally billed to and paid by the client. The costs in the amount of \$10,800.75 were  
26 reasonably incurred by Class Counsel in the prosecution of this matter and are set forth in detail in  
27 the contemporaneous billing records attached hereto as Exhibits #3.

**Service Awards**

8. I respectfully request that for their service as the class representative, the Plaintiff should be awarded the agreed Class Representative Service Payment of \$5,000 in accordance with the Agreement for his time, sacrifice, risk and effort as the class representative on behalf of the Class. (Agreement at ¶ III(B)(1)). Defendant agreed to this payment to the Class Representative and there have been no objections to the requested Class Representative Service Payment. The Declaration of Plaintiff Emi Bruemmer is also submitted herewith in support of this request. As the representative of the Class, the Plaintiff performed her duty to the Class admirably and without exception. The Plaintiff worked extensively with Class Counsel over the course of the litigation, responding to numerous requests, searching for documents, speaking with Class Counsel on the phone on a regular basis, working with Class Counsel, and reviewing the settlement documentation. As set forth in the Agreement, the Plaintiff is also providing a comprehensive release as part of the Settlement, far beyond the class release. The Declaration of Plaintiff details his involvement, sacrifice, stress and risks he undertook as a result of this lawsuit. Plaintiff also assumed the serious risk that they might possibly be liable for costs and fees to Defendant, as well as the reputational risk of being “blacklisted” by other future employers for having filed a class action on behalf of fellow former employees. Without the Plaintiff’s participation, cooperation and information, no other fellow employees would be receiving any benefit. The payment of service awards to successful class representatives is appropriate and the amount of \$5,000 is well within the currently awarded range for similar settlements. The requested award is also reasonable by reference to the amounts that other California courts have found to be reasonable in wage and hour class action settlements: *Zamora v. Balboa Life & Casualty, LLC*, Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding \$25,000 service award); *Lazar v. Kaiser Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28, 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17, 2011)(awarding \$14,767 service award); *Bejarano*

1 *v. Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22,  
2 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS  
3 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service  
4 award); *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10,  
5 2012)(awarding \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC  
6 10005196, Riverside County Superior Court (July 16, 2013)(awarding \$10,000 service award);  
7 *Kisliuk v. ADT Security Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10,  
8 2011)(awarding \$10,000 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case  
9 No. JCCP 4582, Orange County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award);  
10 *Barrett v. Doyon Security Services, LLC*, Case No. BS900199, BS900517, San Bernardino County  
11 Superior Court (Apr. 23, 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek*  
12 *II*, Santa Clara Superior Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service  
13 award); *Taylor v. TIC - The Industrial Complany*, U.S.D.C. Central District of California Case  
14 No. EDCV 16-186-VAP (Aug. 1, 2018) (awarding \$10,000 service award).

15 9. The requested service award is also reasonable in light of the reputational risk that  
16 the Class Representative assumed in bringing this action against her former employer. The Class  
17 Representative put her future employment prospects at risk by becoming a class representative as  
18 the fact that they filed a lawsuit "is searchable on the internet and may become known to  
19 prospective employers when evaluating" her for employment. *Guippone v. BH S&B Holdings,*  
20 *LLC*, 2011 U.S., Dist. LEXIS 126026, \*20 (S.D.N.Y. Oct. 28, 2011). Employers routinely screen  
21 employee candidates to determine whether they have ever filed a suit against other employers,  
22 allowing them to screen out the litigious candidates. An entire industry exists that allows  
23 employers to run extensive background searches on potential employees. Companies who  
24 provide these services specifically highlight the fact that their services allows employers to weed  
25 out litigious employment candidates. Reliable Plant outlines ways that employers can "get a sense  
26  
27  
28

1 of whether a prospective employee is likely to sue" the employer, through background checks and  
2 other means, to screen out these employees.<sup>1</sup>

3 10. As a result, Class Counsel respectfully requests approval of the application for  
4 award of attorneys' fees to Class Counsel in the amount of \$50,000 (equal to 1/3 of the common  
5 fund), an award of litigation expenses in the amount of \$10,800.75, and approval of the requested  
6 service payments to Plaintiff.

7 11. In accordance with California Rules of Court, rule 3.769, I make the following  
8 disclosure. The attorneys' fees awarded shall be allocated 25% to Blumenthal Nordrehaug  
9 Bhowmik De Blouw LLP, and 75% to Zakay Law Group, APC.

10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct. Executed this 11th day of December 2020, at San Diego, California.

12  
13 By:   
14 Shani O. Zakay

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23 <sup>1</sup> [www.reliableplant.com/Read/6959/a-solution-to-fear-of-hiring-litigious-employees](http://www.reliableplant.com/Read/6959/a-solution-to-fear-of-hiring-litigious-employees). Onicra  
24 Credit Rating Agency of India states: "Background screening has become a necessity in today's  
25 litigious society." Back Track Screening also represents: "In today's litigious culture, employers  
26 simply cannot afford to hire employees who will put their company at risk."  
27 <http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf>. PreciseHire also  
28 offers employment screening and similarly warns: "with today's business climate being extremely  
competitive and highly litigious, conducting pre employment background checks has become a  
necessity."  
[https://precisehireblog.wordpress.com/2013/11/21/pre-employment-background-checks-have-bec  
ome-a-busines-necissity/](https://precisehireblog.wordpress.com/2013/11/21/pre-employment-background-checks-have-become-a-busines-necissity/).

**EXHIBIT N**



**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ERIC CHAVEZ,

Plaintiff,

v.

ADIDAS AMERICA, INC.,

Defendant.

Case No.: 5:16-cv-06533-LHK

**ORDER GRANTING PLAINTIFF'S  
MOTIONS FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
MOTION FOR APPROVAL OF  
ATTORNEYS' FEES AND COSTS AND  
CLASS REPRESENTATIVE  
ENHANCEMENT; FINAL JUDGMENT  
THEREON**

On April 19, 2018, a hearing was held on the motion of Plaintiff Eric Chavez ("Plaintiff"), on behalf of himself and Class Members, for final approval of the Class Action Settlement Agreement ("Settlement Agreement") entered into between Plaintiff and Defendants adidas America, Inc. ("Defendants") (Defendants and Plaintiff collectively referred to as the "Parties"), due and adequate notice has been given to the Class Members as required by this Court's Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. No. 56) and Setting a Final Fairness Hearing Date for April 19, 2018 at 1:30 p.m. ("Preliminary Approval Order") (Doc. No. 63) dated December 21, 2017. Having considered the papers on Plaintiff's Motion for Final Approval of Class Action Settlement ("Motion for Final Approval of Settlement") and Plaintiff's Motion for Approval of Attorneys' Fees and Costs; and Memorandum of Points and Authorities in Support ("Motion for Attorneys' Fees and Costs"), the Settlement, and the record and proceedings herein, and having determined that the Settlement is fair, adequate, and reasonable, and otherwise being fully



1 informed, the Court finds, concludes, and hereby orders and adjudges as follows:

2 1. Plaintiff's Motion for Final Approval of Settlement, and Plaintiff's Motion for Attorneys'  
3 Fees and Costs is hereby granted.

4 2. All terms used herein shall have the same meaning as given them in the Settlement.

5 3. The Court has jurisdiction over the subject matter of this proceeding and over all Parties  
6 to this proceeding, including all members of the Settlement Class.

7 4. The Court hereby certifies the following Classes, for purposes of this Settlement only:

8 a. Unpaid Wages Class: All of Defendant's current and former nonexempt  
9 employees who worked for Defendant at any retail store location in the state of  
10 California, at any time from October 11, 2012, through September 15, 2017.

11 b. Pay Card Class: All of Defendant's former employees who worked for Defendant  
12 at any retail store location in the state of California, and whose employment ended  
13 at any time during the portion of Settlement Class Period from October 11, 2013  
14 to September 15, 2017, and who had not affirmatively requested to receive wages  
15 in the form of a pay card.

16 5. Distribution of the Class Settlement Notice directed to the Class Members as set forth in  
17 the Settlement Agreement has been completed in conformity with the Preliminary Approval Order,  
18 including individual notice to all Class Members who could be identified through reasonable effort, and  
19 the best notice practicable under the circumstances. The Class Settlement Notice provided due and  
20 adequate notice of the proceedings and of the matters set forth in the Preliminary Approval Order,  
21 including the proposed Settlement. The Class Settlement Notice provided adequate and appropriate  
22 notice to all persons entitled to such Class Settlement Notice and therefore fully satisfied due process  
23 requirements. All members of the Class are covered by and included within the Settlement and within  
24 this Final Approval Order and Final Judgment, as no class members have opted-out within the opt-out  
25 deadline of March 5, 2018 (for the 3,988 class members) and April 13, 2018 (for the 35 additional class  
26 members).

27 6. The Court hereby finds that the Settlement was entered into in good faith and has been  
28 reached as a result of intensive, serious, and non-collusive arm's-length negotiations. The Court further  
finds that Plaintiffs have satisfied the standards and applicable requirements for final approval of the

Settlement under Rule 23 of the Federal Rules of Civil Procedure and California law.

7. The Court hereby approves the Settlement and finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties to effectuate the Settlement according to its terms and provisions, and in compliance with this Final Approval Order and Final Judgment.

8. Upon satisfaction of all payments and obligations in the Settlement, and except as to such rights or claims as may be created by the Settlement Agreement, Plaintiff and all Class Members who did not timely submit requests for exclusion by the opt-out deadlines, release and discharge the Released Parties as follows:

**a. Unpaid Wages Class Release:**

Plaintiff and members of the Unpaid Wages Class release any claims, damages, or causes of action arising out of the facts and allegations set forth in the Action, that arose during the Settlement Class Period, from October 11, 2012 to September 15, 2017, including those set forth in the Plaintiff's Complaint and First Amended Complaint, for any and all claims for any alleged failure to properly pay all wages due for time worked, including proper payment of minimum wages and overtime wages due to time spent undergoing security checks; any alleged failure to provide or compensate for missed, short or late meal periods; any alleged failure to provide or compensate for missed, short or late rest breaks; any alleged failure to provide accurate wage statements; any alleged failure to make wage payments in a timely manner; any alleged failure to pay the foregoing amounts due in a timely manner after termination; any alleged failure to act in accordance with Business and Professions Code sections 17200, *et seq.*, including those claims related to the underlying claims in this Action under California Labor Code sections 201, 202, 203, 212, 213, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1, and all applicable wage orders and any applicable penalties arising from the foregoing; as well as any claim brought pursuant to California Labor Code section 2698, *et seq.*

**b. Pay Card Class Release:**

Plaintiff and members of the Pay Card Class release any claims, damages, or causes of action arising out of the facts and allegations set forth in the Action, that arose during the portion of the Settlement Class Period, from October 11, 2013 to September 15, 2017, including those set forth in the Plaintiff's Complaint and First Amended Complaint, for any alleged failure to pay all amounts due in a timely manner after termination due to the use of pay cards as a form of payment; any alleged failure to act in accordance with Business and Professions Code sections 17200, *et seq.*, including those claims related to the underlying claims in this Action under California Labor Code sections 203, 212 and 213, and all applicable wage orders and any applicable penalties arising from the foregoing; as well as any claim brought pursuant to California Labor Code section 2698, *et seq.*

**c. Release Applicable To Members of Both Unpaid Wages and Pay Card Class:**

Members of both subclasses shall be entitled to recover the cumulative amount based upon their membership in each subclass, and shall be bound by the releases applicable to both sub-classes.

9. “Released Parties” means Defendant adidas America, Inc., including its past, present and future parents, owners, subsidiaries, affiliates, successors-in-interest, assigns, auditors, accountants, experts, contractors, partners, insurers, reinsurers, and other parties acting on their behalf, officers, directors, shareholders, employees, agents, attorneys, and representatives.

10. The Court hereby confirms as Class Counsel, Larry W. Lee of Diversity Law Group, P.C., William L. Marder, Polaris Law Group LLP, and Dennis S. Hyun of Hyun Legal, APC.

11. The Court hereby finds the monetary settlement of \$1.5 million, provided for in the Settlement Agreement to be fair, reasonable, and adequate.

12. The Court orders Rust Consulting (“Rust”) to distribute the Gross Settlement Amount including Individual Settlement Payments to the Settlement Class in accordance with the terms of the Settlement Agreement.

13. The Court approves the payment of employer-side payroll taxes on the wage component of the individual settlement payments and directs Defendant to pay these taxes to the appropriate taxing authorities, in addition to the \$1.5 million Gross Settlement Amount, as provided for in the Settlement.

14. The Court further approves the payment of \$27,000 to Rust for the claims administration costs. The payment authorized by this paragraph shall be made in accordance with the terms of the Settlement Agreement.

15. “[C]ourts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a departure.” *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *see also Ridgeway v. Wal-Mart Stores Inc.*, 269 F. Supp. 3d 975, 1000 (N.D. Cal. 2017) (“Although the California courts have not adopted a 25 percent as a “benchmark” figure, as the Ninth Circuit has, 25 percent is within the range of what courts will award as a percentage of the common fund in California.”). Special circumstances warranting upward adjustment are not present here. Plaintiff has filed numerous identical cases, including before multiple judges in this district. Class Counsel in the instant case performed the following work: (1) interviewed employees and reviewed their documents;

(2) served written discovery; (3) deposed Defendants' Rule 30(b)(6) witness; (4) defended Plaintiff's deposition; (5) analyzed time records; (6) attended a one day mediation on June 14, 2017; and (5) engaged in subsequent negotiations until the parties accepted the mediator's proposal on July 3, 2017. ECF No. 65 at 4. The lodestar of \$311,180 for 465.6 hours seems high given the amount of work performed. Moreover, Class Counsel billed all of their time at the rate of \$650 to \$700 per hour. Nevertheless, the Court will award a 25% benchmark of \$375,000, which is \$63,820 beyond the lodestar and represents a multiplier of 1.21. Based on Ninth Circuit case law, this multiplier is reasonable. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n. 6 (9th Cir. 2002) (noting multipliers in common fund cases commonly range from 1 to 4); *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at \*4 (N.D. Cal. Feb. 6, 2013) ("Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases."). The Court finds that an attorney's fees award of \$375,000 is fair and reasonable, and is justified by the results achieved. In addition, the Court approves Class Counsel's request for costs and expenses in the amount of \$18,935.49.

16. Under the terms of the Settlement and the authorities, evidence, and argument set forth in Class Counsel's application, Plaintiff is entitled to a representative enhancement award of \$10,000.

17. Upon satisfaction of all payments and obligations in the Settlement Agreement, this Action is hereby dismissed with prejudice. The Court shall have and retain continuing jurisdiction over the Action and over all Parties and Settlement Class to the fullest extent necessary or convenient solely to address, enforce, and effectuate the terms of the Settlement and this Final Approval Order and Final Judgment as follows: (i) the interpretation and enforcement of the terms of the Settlement and the Final Approval Order and Final Judgment; (ii) Settlement administration matters; and (iii) such post-Final Judgment matters as may be appropriate under court rules or set forth in the Settlement and/or this Final Approval Order and Final Judgment. If the Settlement does not become final and effective in accordance with its terms, this Final Approval Order and Final Judgment and all orders entered in connection herewith, shall be vacated and shall have no further force or effect. The Clerk shall close the file.

**IT IS SO ORDERED.**

Dated: April 19, 2018

  
HON. LUCY H. KOH  
U.S. DISTRICT COURT JUDGE